

THE LAW AND  
ECONOMICS OF  
ARTICLE 82 EC

---

Robert O'Donoghue  
and A Jorge Padilla



• HART •  
PUBLISHING

# The Law and Economics of Article 82 EC

Robert O'Donoghue and A Jorge Padilla



• H A R T •  
PUBLISHING

OXFORD AND PORTLAND, OREGON

2006

Published in North America (US and Canada) by  
Hart Publishing  
c/o International Specialized Book Services  
920 NE 58th Avenue, Suite 300  
Portland, OR 97213-3786  
USA  
Tel: +1 503-287-3093 or toll-free: (1) 800-944-6190  
Fax: +1 503 280 8832  
Email: [orders@isbs.com](mailto:orders@isbs.com)  
Website: [www.isbs.com](http://www.isbs.com)

© Robert O'Donoghue and A Jorge Padilla, 2006

First published 2006, Reprinted 2006 (twice), 2007

Robert O'Donoghue and A Jorge Padilla have asserted their right under  
the Copyright, Designs and Patents Act 1988, to be identified as the  
authors of this work.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any mean, without the prior permission of Hart Publishing, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Hart Publishing at the address below.

Hart Publishing, Salter's Boatyard, Folly Bridge, Abingdon Rd, Oxford, OX1 4LB  
Telephone: +44 (0)1865 245533 Fax: +44 (0)1865 794882  
Email: [mail@hartpub.co.uk](mailto:mail@hartpub.co.uk)  
Website: [www.hartpub.co.uk](http://www.hartpub.co.uk)

British Library Cataloguing in Publication Data  
Data Available

ISBN-13: 978-1-84113-502-1 (hardback)  
ISBN-10: 1-84113-502-X (hardback)

Typeset by Hope Services, Abingdon  
Printed and bound in Great Britain by  
TJI Digital, Padstow, Cornwall

To my loving parents, Geoffrey and Mary, for instilling the  
confidence to do great things, and the belief to  
always try to do good things.

Robert O'Donoghue

To Araceli, Aitana, and Claudia for their unconditional  
support and infinite patience

A Jorge Padilla

## FOREWORD

Article 82 has always been a subject of considerable intellectual and practical difficulty. The first question (can it apply to a merger?) was answered only in 1973. The next question (does it require different kinds of analysis for exploitative and anti-competitive abuses?) was answered affirmatively later, but raised further questions. What is the test of “unfair” prices or contract terms under Article 82(a)? What tests distinguish legitimate competition from anticompetitive conduct under Article 82(b)? Is harm to consumers necessary for an abuse under Article 82(c)? Can conduct be unlawful as a reprisal abuse if it would not be illegal anyway? Is there an “unexpressed” category of abuses which do not fall under one of the four clauses of Article 82, but which result from the “special responsibility” of dominant companies, and if there is, what could it be? Can lawyers and economists agree on the answers to these questions, and until they do so, what advice (if any) can usefully be given to companies?

It is perhaps surprising that these, undoubtedly difficult, questions have not been more thoroughly analysed. Every company which is, or may be, dominant has to have a pricing policy. A too-broad concept of anticompetitive abuses would discourage legitimate competition. *Per se* rules would be unjustifiable, but some economists seem to believe that no useful general tests or guidelines are possible either. In particular in recent years, lawyers and economists have criticised what the Commission and the Community Courts said in particular cases, but usually without offering constructive suggestions. National competition authorities in EC Member States have always had power to apply Article 82, but most of them did not try to develop principles on which they could do so.

Questions that are so important and have caused so much difficulty for so long need to be dealt with by combining legal and economic knowledge and experience. This Robert O'Donoghue and Jorge Padilla have done. They have identified and analysed all of the fundamental questions concerning the interpretation and implications of Article 82. They have offered carefully considered answers, making it clear where their conclusions suggest that the Commission and the Community Courts have expressed themselves, in individual cases, in ways that obscure rather than clarifying the general principles which underlie the case law. They have formulated general principles which seem to me to be sound and reasonable, both as law and as economics. They have written a new kind of competition law book, deliberately avoided merely compiling case summaries, but providing an intellectual framework.

Above all, they have dealt with one of the most important and difficult issues, the test of anticompetitive abuses, by returning to the language of Article 82. As long ago as 1975 the Court of Justice, in the *Sugar Cartel* judgment mostly concerned with what is now Article 81, decided that Article 82(b) prohibits conduct by a dominant company which limits the production, marketing or technical development of

*its competitors*, that is anticompetitive abuses. That little-noticed finding (since confirmed in other judgments) was in fact more important than the description of an anticompetitive abuse given later in the *Hoffmann-La Roche* judgment. “Methods different from those which condition normal competition”, the phrase in the judgment, does not provide a useful test of anticompetitive conduct. “Limiting” possibilities of production, marketing or technical development which would, but for the supposedly unlawful conduct, be available to competitors provides a test, and may well provide the only possible or necessary definition, of anticompetitive conduct.

By regarding Article 82(b) as the legal basis for all cases of foreclosure, exclusionary or anticompetitive abuses, the authors clarify the whole law on abuse of dominance. There are, in essence, three kinds of abuses: exploitative abuses (Article 82(a)), exclusionary abuses (Article 82(b)), and discrimination between companies *not* associated with the dominant enterprise (Article 82(c)). Discrimination in favour of the dominant company’s own operations comes under Article 82(b). Tying and bundling (Article 82(d)) can be either exclusionary or exploitative, or both. Reprisal abuses are exclusionary, since they discourage aggressive competition. The test for exclusionary conduct is that set out in the Treaty, which is both theoretically sound and suitable for use by dominant enterprises.

The most important consequence, in practice, is to make possible a rational and operational approach to pricing by dominant companies. Price reductions which are conditional on the buyer buying exclusively from the dominant company are illegal, except in very special circumstances. Other price reductions, such as quantity rebates, benefit consumers and do not “limit” marketing possibilities otherwise open to competitors. This solves the greatest single problem facing dominant companies under the Commission’s practice up to now, and does so in a way which, because it is based on the words of the Treaty and the case law of the Court of Justice, will be difficult for any competition authority to reject. It provides much more legal certainty than any economic test which has been suggested, and avoids the ambiguity of the Commission’s “exclusivity inducing” test. Exclusivity, in the sense of buying only from one source, can also result from the dominant company offering the lowest price or the best value. By analysing the case law, the authors have brought out the underlying principles, and clarified both the principles and the issues unresolved by the case law, or indeed created by apparent inconsistencies in it.

By establishing basic principles and identifying and discussing the questions which arise from them, the authors have provided an intellectual framework into which all the case law can be fitted and analysed, and from which conclusions can be drawn about important questions which the accidents of litigation have not so far raised. They have offered tests and conclusions more, it seems to me, than most other authors who have summarised the cases and made general comments, which were true but which have not always provided much practical guidance except in clear situations.

This book will make it necessary in future for anyone writing seriously about Article 82 to take into account the fundamental legal principles to which the authors have called to our attention, to propose rules and make comments which reconcile both legal and economic analysis, and to suggest tests which can be used in practice and which give answers which would be generally accepted as correct. In short, they have greatly raised the intellectual level of the discussion of Article 82, and provided practical and acceptable answers to many of the questions which have concerned lawyers, economists and companies for many years.

This book also creates another precedent, which others should follow. Books on substantive competition law are better if they are written jointly with economists and books on competition economics are better if they are written jointly with lawyers. One of the strengths of this book is that it combines so well the legal framework and the economic analysis. That combination is particularly important in Article 82 cases, but it is also essential in cases involving State measures restricting competition, which are subject to Article 86 EC.

The Commission has published a Discussion Paper on the interpretation of Article 82. Whatever the final version of this may be, it is clear that it will not answer all the important questions about Article 82 which will inevitably arise. All of the issues discussed in this book are likely to come before the Community Courts (and increasingly also national courts). It may be some time before the Courts have given their answers to all these questions. But judgments, even in leading cases, cannot reasonably be expected to provide an intellectual framework for an entire area of law: judges are not legislators, and their role is to decide individual cases. The framework which the authors have provided will be of great value to everyone concerned with Article 82 in the future, and will enable courts and national authorities to decide Article 82 cases correctly with greater confidence than has been possible up to now.

In an area of law such as this, no book can be expected to be both seminal and definitive in all respects at the same time. But a book can create a new paradigm which provides a basis for subsequent analysis, and be definitive on some issues, in the sense that some of the conclusions reached are so clearly convincing and correct that nobody questions them again. It seems to me that this book has achieved both.

John Temple Lang<sup>1</sup>

---

<sup>1</sup> Cleary Gottlieb Steen and Hamilton LLP, Brussels and London; Professor of Law, Trinity College Dublin; Visiting Senior Research Fellow, Oxford University.

## AUTHORS' PREFACE

This idea of this book was conceived in 2003 at the European University Institute's roundtable entitled "*What is an abuse of dominance?*" Perhaps unusually for a lawyer and an economist, the authors found themselves in agreement on a number of issues. In particular, we were dissatisfied with traditional competition law textbooks that ignored the influence of economics and equally unhappy with competition economics textbooks that ignored the need for administrable rules and legal certainty. Fortified with this initial consensus, we set out to produce a textbook that would be useful to both lawyers and economists.

The subject of the book—abuse of dominance under Article 82 EC—is topical. In addition to the European University Institute roundtable mentioned above, Article 82 EC has received detailed comment from the Global Competition Law Centre's *Research Papers on Article 82 EC* (2005), the Organisation for Economic Cooperation and Development's *Competition on the Merits* study (2005), the Economic Advisory Group on Competition Policy's *An Economic Approach to Article 82* (2005), and, most notably, DG Competition's Staff Discussion Paper on Article 82 EC (2005). Similar initiatives are underway in the United States in the context of their on-going antitrust modernisation review.

Significant interest in Article 82 EC has been prompted by a series of factors. First, distinguishing abusive unilateral conduct from legitimate competition is inherently difficult, since they often look similar (e.g., low prices). Unless competition law is to have the perverse effect of chilling competition, clear rules are needed.

Second, Article 82 EC has been the "poor relation" of EC competition law in that it has not benefited from modernisation to bring it into line with economic thinking in the same way as have Article 81 EC and the merger control rules.

Third, with the advent of modernisation, national authorities and courts will apply Article 82 EC and equivalent national laws much more frequently than they have done in the past. Indeed, this is already a reality with significant fines for abusive conduct increasingly becoming the norm at national level. It is vital for firms operating in multiple jurisdictions that similar principles are applied and that levels of expertise are relatively uniform.

Finally, and perhaps most importantly, our practical experience in counselling firms is that the application of Article 82 EC is unclear in material respects. Firms with 40% market shares often unnecessarily worry that they are, or may be, dominant, with the significant consequences that this entails for their commercial practices. The welfare cost of this lack of clarity and excessive caution must be enormous to the EU economy as a whole—something the EU can ill-afford given its lack of competitiveness relative to other international blocs and the stated objectives of the Lisbon Agenda in this regard.



This book does not, as such, seek to develop new principles for the application of Article 82 EC. Our primary objective is to inform readers of the current law, both as to the constituent elements of Article 82 EC and in more detail for the main categories of exclusionary and exploitative abuses. Although we have been involved in a number of the cases discussed in the book—sometimes on opposing sides—we hope that the law is stated clearly and neutrally (or at least that our respective biases have cancelled each other out).

But the book is also hopefully more ambitious in certain respects. In the first place, each chapter on the main categories of abuse includes a detailed section on the applicable economic principles. We have endeavoured to present these principles in a non-technical manner to the fullest extent possible, bearing in mind the advice of Professor Stephen Hawking (*"Someone told me that each equation I included in the book would halve the sales."*).

Second, we have tried to put forward a more coherent framework for the consistent analysis of particular types of conduct. A simple but important example concerns exclusionary abuses. Commentators are struggling to verbalise tests for exclusionary conduct and various alternatives have been proposed. But it seems to us that Article 82(b) already contains a good basic test: conduct is exclusionary when it "limits" rivals' production and causes "prejudice to consumers." This captures the two key features of abusive conduct: that it materially harms rivals and causes consumer harm. Similarly, a lot of confusion has arisen under Article 82 EC concerning discrimination. We make a modest, but important, suggestion: that all discrimination aimed at rivals should be analysed as exclusionary conduct, and not as discrimination *per se*. Discrimination may be necessary in this regard, but is not generally sufficient to prove an exclusionary abuse. This would mean that the residual importance of discrimination under Article 82 EC would be limited—essentially to situations of secondary-line injury (for which we see no convincing basis for competition law intervention)—which is consistent with economic thinking and would aid clarity considerably.

Finally, we consider a number of issues or practices that have not received detailed treatment under Article 82 EC, setting out the arguments for and against particular conclusions, and tentatively suggesting the way we think the issues should be analysed.

We are reluctant to attach a label to the overall approach adopted in the book. Our hope is that it is more or less the right one. But we consider that the choice sometimes posited between an approach based on legal form and one based on economic effects is false. Relying only on legal form almost certainly leads to incorrect conclusions by ignoring the mixed economic effects of many unilateral practices. Proponents of an economic effects analysis, however, also need to recognise that the law would be *much* less clear than it is already if each case depended on an assessment of the economic benefits and harm of conduct, most of which can only be assessed *ex post* (if at all). Economists sometimes underestimate the importance of legal certainty to businesses.

An intermediate approach—which we support—is to use simple error-cost analysis based on economic evidence to structure administrable legal rules (“structured rule-of-reason”). Take above-cost unconditional price cuts. There is a case in economic theory that such price cuts can harm consumer welfare in certain circumstances. But no clear legal rule has been devised to say when harm to consumer welfare occurs. Absent a clear rule, restricting unconditional above-cost price cuts is likely to greatly chill price competition. The optimal solution is therefore to do nothing, even if in so doing certain anticompetitive practices thereby escape censure.

This book is a first edition, but comes at an important juncture. The Commission may well publish guidelines on Article 82 EC in the next 12–18 months. Important cases are also pending before the Community Courts, including *Microsoft* (tying and refusal to deal), *British Airways/Virgin* (rebates), *Wanadoo* (predatory pricing), *Deutsche Telekom* (margin squeeze), and *AstraZeneca* (use and abuse of patent approval system). A second edition therefore seems likely sooner rather than later.

As with any endeavour of this kind, we have benefited from the input and assistance of numerous people, without whom the book would never have been completed. These include: Paul Bury, Alexandra Deege, Alfonso Donato Giuliani, Tanya Dunne, Rupert Elderkin, Simon Genevaz, Thomas Graf, Rogier Groen, Urs Hagler, Hertta Hyrkas, Joachim Keller, Philip Kienapfel, Paul Marquardt, Joanna O’Sullivan, and Brendan Reddy.

A number of other individuals deserve special mention. Nicholas Levy (Cleary Gottlieb) and David Evans (LECG) were very supportive of the idea of the book and helped obtain the support of our respective firms for this project (including, in one case, a leave of absence). Caroline Brennan (Arthur Cox), Christopher Cook (Cleary Gottlieb), Cynthia Ngwe (McDermott Will & Emery), Ian Reynolds (BP Collins), and David Spector (Paris Science Economiques) each helped on various chapters, which we gratefully acknowledge. We also benefited from discussions with a number of people that greatly improved our understanding and presentation of certain issues, including Christian Ahlborn (Linklaters), Maurits Dolmans (Cleary Gottlieb), Inmaculada Gutierrez (LECG), Alison Oldale (LECG), and Romano Subiotto (Cleary Gottlieb). We also had first-rate paralegal, secretarial, and library assistance from Axelle Arbonnier, Kevin Copeland, Henk Dekeyzer, Satu-Anneli Kauranen, Barbara Martinez, Anneliese Rosengarten, and Karl Willemijns (all Cleary Gottlieb). Our publishers, Hart Publishing, have been excellent and Richard Hart in particular has always been flexible and responsive. Finally, John Temple Lang has been a constant source of encouragement from the inception of this book until its conclusion. He also kindly agreed to write a foreword, which is fitting since he has, for many years, been the leading thinker on Article 82 EC issues.

In the time-honoured tradition, none of the above is responsible for any blunders that follow. Equally, each co-author blames the other for anything said in this book that might later prove inconvenient or embarrassing before a court,

competition authority, or other tribunal. Finally, we should make clear that any opinions expressed in this book are personal only and do not represent those of our respective firms or clients.

The law is stated as of March 31, 2006.

ROBERT O'DONOGHUE  
A. JORGE PADILLA

## TABLE OF CASES

### I. TABLE OF COMMISSION COMPETITION DECISIONS

<i>ABG/Oil Companies</i> , OJ 1977 L117/1 .....	451, 591
<i>ACI – Channel Tunnel</i> , OJ 1994, L224/28 .....	124, 457, 589, 721
<i>ACNielsen, XXVIth Report on Competition Policy</i> (1996), para 64.....	588, 707
<i>Alpha Flight Services/Aéroports de Paris</i> , OJ 1998 L230/10.....	672
<i>Aluminium Imports from Eastern Europe</i> 1985 OJ L92/1 .....	29
<i>Amministrazione Autonoma dei Monopoli di Stato</i> , OJ 1998 L252/47 .....	95, 652, 716
<i>Astra</i> , OJ 1993 L20/23 .....	679, 718
<i>AstraZeneca</i> , Commission Press Release IP/05/737 of 15 June 2005 .....	532–33, 547, 716
 <i>Bandengroothandel Frieschebrug BV/NV Nederlandsche Banden-Industrie Michelin (Michelin I)</i> , OJ 1981 L353/33 .....	
	87, 128, 401, 596, 668, 714–15
<i>Bass</i> , OJ L186/1 .....	95
<i>BBI/Boosey &amp; Hawkes – Interim measures</i> , OJ 1987 L286/36.....	128, 175, 229–30, 469–71, 684, 687
<i>Boat Equipment, Xth Report on Competition Policy</i> , paras 119–20.....	578
<i>BP Kemi-DDSF</i> , OJ 1979 L286/32 .....	370, 586
<i>BPB Industries plc (British Plasterboard)</i> , OJ 1989 L10/50.....	94, 122, 126, 279, 285–86, 385, 401, 596, 715
<i>Breeders' Rights: Roses</i> , OJ 1985 L369/9 .....	22
<i>British Gypsum</i> , OJ 1992 C321/9 .....	385, 387, 394
<i>British Interactive Broadcasting/Open</i> , OJ 1999 L312/1 .....	92, 457, 589, 721
<i>British Leyland</i> , OJ 1984 L207/11 .....	582, 715
<i>British Midland v Aer Lingus</i> , OJ 1992 L96/34.....	425, 461
<i>British Sugar plc</i> , OJ 1999 L76/1.....	95
<i>Brussels National Airport (Zaventem)</i> , OJ 1995 L216/8 .....	580, 595
<i>BUMA and SABAM</i> , OJ 2005 C200/11 .....	694
<i>Bundesliga</i> , OJ 2005 L134/46 .....	694, 697
 <i>Carnaud/Sofreb, XVIIth Report on Competition Policy</i> (1987), para 70 .....	
	41
<i>Cewal, Cowac and Ukwai</i> , OJ 1993 L34/20 ....	149, 177, 190, 235, 279, 680, 708, 716
<i>Chiquita</i> , OJ 1976 L95/1 .....	6, 33, 96, 107, 175, 570, 582, 609, 710, 715
<i>Christiani &amp; Nielsen</i> , OJ 1969 L165/12 .....	33
<i>Clearstream (Clearing and settlement) (Case COMP/38/096)</i> , Commission Dec of 4 June 2004, not yet published .....	72, 74, 87–88, 110, 120–21, 340, 415, 435, 441, 459, 461, 467, 541, 564, 577, 595, 667, 710
<i>CNSD</i> , OJ 1993 L203/27 .....	661
<i>Coca-Cola</i> , OJ 2005 L253/21 ...	363, 371–72, 392, 401, 503, 596, 681, 693–99, 705–6
<i>Coca-Cola Export Corporation-Filiale Italiana</i> , Commission Press Release IP/88/615 of 13 October 1988.....	401, 596

<i>Coca-Cola Italia Undertaking</i> , XIXth Report on Competition Policy (1989), para 50 .....	392, 502, 706
<i>Coca-Cola/San Pellegrino</i> , XIXth Report on Competition Policy (1989) .....	385, 391
<i>Continental Can Company</i> , OJ 1972 L7/25 .....	13, 126
<i>De Beers/Alrosa</i> , OJ 2005 C136/32 .....	364, 694
<i>Decca Navigator System</i> , OJ 1989 L43/27 .....	86, 227, 521–22, 524–25, 527–28, 710, 715
<i>De Post-La Poste</i> , OJ 2002 L61/32 .....	74, 664
<i>Deutsche Post AG</i> , OJ 2001 L125/27 .....	95, 110, 218, 259–62, 267–68, 270, 324, 679, 716, 722, 734, 736
<i>Deutsche Post AG – Interception of cross-border mail</i> , OJ 2001 L331/40 .....	95, 321, 343, 434, 667–68, 715
<i>Deutsche Telekom AG</i> , OJ 2003 L263/9 .....	31–32, 219, 304, 311–13, 318–22, 332, 335–38, 346–47, 661, 668, 713–15, 719
<i>DFB Joint Selling of Media Rights</i> , OJ 2005 C130/2 .....	697
<i>DHL International</i> , XXIst Report on Competition Policy (1991), para 88 .....	457, 589, 721
<i>Digital Undertaking</i> , Commission Press Release IP/97/868 of 10 October 1997 .....	286, 291, 503, 595, 707, 732–33
<i>Distribution of Package Tours during the 1990 World Cup</i> , OJ 1992 L326/31 .....	22, 33
<i>DSD</i> , OJ 2001 L166/1 .....	74, 97, 437, 652–54, 668
<i>EBU-Eurovision</i> , OJ 1993 L179/23 .....	457, 589, 721
<i>ECS/AKZO – Interim Measures</i> , OJ 1983 L252/13 .....	86, 94, 684, 719
<i>ECS/AKZO</i> , OJ 1985 L374/1 .....	15, 33, 114, 176–77, 218, 235, 246, 249, 251, 259, 285, 296, 318, 550, 678–79, 681, 715
<i>Eirpage</i> 1991 OJ L306/22 .....	33, 457, 589, 721
<i>Elsinore Port</i> , Commission Press Release IP/96/456 of 30 May 1996 .....	426
<i>Eurofix-Bauco/Hilti</i> 1988 OJ L65/19 .....	68, 74, 76, 86, 94, 124, 128, 135, 227–28, 235, 278, 281, 285, 479, 491–94, 500, 508–9, 512, 680, 708, 715, 731
<i>European Night Services</i> , OJ 1994 L259/20 .....	124
<i>European Sugar Industry</i> , OJ 1973 L140/17 .....	715
<i>Eurotunnel</i> , OJ 1994 L354/66 .....	124
<i>Eurovision</i> , OJ 2000 L151/18 .....	661
<i>Exclusive Right to Broadcast Television Advertising in Flanders</i> , OJ 1997 L244/18 .....	44
<i>FAG – Flughafen Frankfurt/Main AG</i> , OJ 1998 L72/30 .....	97, 173, 228, 425, 438, 451, 463, 672
<i>Filtrona/Tabacalera</i> , XXIVth Report on Competition Policy (1989), para 61 .....	468, 470
<i>Finnish Airports</i> , OJ 1999 L69/24 .....	173
<i>1998 Football World Cup</i> , OJ 2000 L5/55 .....	76, 167, 203, 578, 580, 713

<i>Franco-Japanese Ballbearings</i> , IIIrd Report on Competition Policy (1974), para 20.....	29
<i>French-West African Shipowners' Committees</i> , OJ 1992 L134/1 .....	675
<i>Gas Interconnector</i> , XXVth Report on Competition Policy (1996), para 82 .....	457, 589, 721
<i>GEC-Siemens/Plessey</i> , OJ 1990 C239/2.....	41
<i>GEMA I</i> , OJ 1971 L134/15.....	13, 649
<i>GEMA II</i> , OJ 1982 L94/12 .....	649–50
<i>General Motors Continental</i> , OJ 1975 L29/14.....	715
<i>Gosme/Martell-DMP</i> , OJ 1991 L185/23.....	33
<i>GVG/FS</i> , OJ 2004 L11/17.....	120, 212, 441
<i>GVL</i> , OJ 1981 L370/49 .....	578
<i>HOV SVZ/MCN</i> , OJ 1994 L104/34.....	340, 400, 563, 594, 716
<i>Hugin/Liptons</i> , OJ 1978 L22/23.....	424
<i>IBM</i> , OJ 1984 L118/24.....	495–96, 706
<i>IGR Stereo Television-Salora</i> , XIth Report on Competition Policy (1981), para.63 .....	457, 589, 721
<i>Ijsselcentrale</i> , OJ 1991 L28/32 .....	124, 661
<i>Ilmailutaitos/Luftfartsverket (Finnish Airports)</i> , OJ 1999 L69/24 .....	97, 203, 569, 579, 672–73
<i>IMS Health/NDC – Interim measures</i> , OJ 2002 L59/18 .....	121, 123, 427, 435, 438, 450, 454, 543, 709
<i>Industrial Gases</i> , XIXth Report on Competition Policy (1989), para 62 .....	370, 586
<i>Infonet</i> , XXIIInd Report on Competition Policy (1993), para 416 .....	589, 721
<i>Interbrew</i> , Commission Press Release IP/04/574 of 30 April 2004 .....	385–86
<i>IRI/AC Nielsen Company</i> , XXVIth Report on Competition Policy (1996), para 64 .....	370
<i>Irish Continental Group v CCI Morlaix - Interim measures</i> [1995] CMLR 177.....	684
<i>Irish Continental Group CCI Morlaix-Port of Roscoff</i> , XXVth Competition Policy Report (1996), para 43 .....	124, 426
<i>Irish Sugar plc</i> , OJ 1997 L258/1 .....	97, 163, 279, 281, 285–86, 341, 374, 383, 400–1, 521–22, 548, 569, 669
<i>Italian Flat Glass</i> , OJ 1981 L326/12 .....	94
<i>Italian Flat Glass</i> , OJ 1988 L133/34 .....	94
<i>John Deere</i> , OJ 1985 L35/38 .....	472
<i>Johnson and Johnson</i> , OJ 1980 L377/16.....	472
<i>Kabel-metal-Luchaire</i> , OJ 1975 L222/34 .....	575, 588
<i>Kodak</i> , OJ 1970 L147/24.....	33
<i>Konica</i> , OJ 1988 L78/34 .....	472
<i>Langnese-Iglo GmbH</i> , OJ 1993 L183/19 .....	687

<i>La Poste/SWIFT</i> , OJ 1997 C335/3 .....	706
<i>London European/Sabena</i> , OJ 1988 L317/47 .....	87, 424, 458, 715
<i>Magill TV Guide/ITP, BBC and RTE (Magill)</i> , OJ 1989 L78/43 .....	16, 86, 95, 115, 227, 427, 438, 454, 461, 678, 723
<i>Michelin (Michelin II)</i> , OJ 2002 L143/1 .....	375, 385–87, 396, 710, 714
<i>Microsoft</i> , XXIVth Report on Competition Policy (1994), para 212 .....	707
<i>Microsoft (Case COMP/C–3/37.792)</i> , Commission Dec of 24 March 2004, not yet published .....	20, 74, 87, 96, 122–23, 127, 176, 181–82, 192–94, 197, 206–7, 211, 213–14, 220, 225, 326, 408, 427, 430–33, 438, 444–46, 453–54, 458–59, 461, 478–80, 491, 496–500, 509, 517, 543, 677, 680–83, 708, 713–14, 716, 718–19, 723–26, 731, 739
<i>Napier Brown/British Sugar</i> , OJ 1988 L284/41 .....	15, 94, 97, 114, 282, 285–86, 303, 310–13, 341, 477, 479, 492, 509–10, 550, 591, 662, 664, 714–15
<i>National Coal Board, National Smokeless Fuels Ltd and the National Carbonising Company Ltd</i> , OJ 1976 L35/6 ...	217, 303, 310–11, 313, 331, 338, 684
<i>National Sulphuric Acid Association</i> , OJ 1989 L190/22 .....	131
<i>NDC Health/IMS Health - Interim measures</i> , OJ 2002 L59/18 .....	16, 684, 687–89
<i>NDC Health/IMS Health - Interim measures</i> , OJ 2003 L268/69 .....	121, 427, 429, 689
<i>Nederlandse Vereniging van Banken (Dutch Banks)</i> , OJ 1999 L271/28 .....	670
<i>Nestlé/Perrier</i> , OJ 1992 L356/1 .....	85
<i>Osram/Airam</i> , XIth Report on Competition Policy (1981), para 97 .....	529
<i>P&amp;I Clubs/Pooling Agreement</i> , OJ 1999 L125/12 .....	74
<i>Pelican/Kyocera</i> , XXVth Report on Competition Policy (1997), paras 86–87 .....	68, 104
<i>Phoenix/IBM</i> , XXIIInd Report on Competition Policy, p 426 .....	684
<i>Pioneer Hi-Fi Equipment</i> , OJ 1980 L60/21 .....	708
<i>Polypropylene</i> , OJ 1986 L230/1 .....	22
<i>Port of Rødby</i> , OJ 1994 L55/52 .....	124, 409, 426
<i>Portuguese Airports</i> , OJ 1999 L69/31 .....	173, 580, 672–73
<i>Premier League Football</i> , Commission Press Release IP/05/1441 of 17 November 2005 .....	694
<i>RAI/Unitel</i> , OJ 1978 L157/39 .....	661
<i>Repsol CPP SA</i> , OJ 2004 C258/7 .....	694
<i>Saba's EEC Distribution System</i> , OJ 1983 L376/41 .....	115
<i>SACEM &amp; SABAM</i> , IVth Report on Competition Policy, para 112 .....	578
<i>Scandlines Sverige AB v Port of Helsingborg (Case COMP/A.36.568/D)</i> , Commission Dec of 23 July 2004, not yet published .....	608, 611–14, 617–18, 629, 632, 638

<i>Sea Containers v Stena Sealink – Interim measures</i> ,	
OJ 1994 L15/8.....	97, 124, 173, 409, 425, 435, 438, 447, 450–51, 460–61, 672, 684
<i>Sealink/B&amp;I Holyhead – Interim measures</i> [1995] 5 CMLR 255 .....	684
<i>Sequential Use of Coupons</i> (Case Comp/A.38763/D2) .....	564, 584, 655–56
<i>Soda-Ash/Solvay</i> , OJ 1991 L152/21 .....	95, 126–27, 135, 205,
	394, 530, 568, 575–76, 715–16
<i>Soda-Ash/Solvay</i> , OJ 2003 L10/10 .....	664
<i>Spanish Airports</i> , OJ 2000 L208/36 .....	
<i>Sperry New Holland</i> , OJ 1985 L376/21 .....	472
<i>Stichting Certificate Kraanverhuurbedrijf and the Federatie van Nederlandse</i>	
<i>Kraanhuurbedrijven</i> , OJ 1994 L117/30 .....	30
<i>Sundbusserne v Port of Helsingborg</i> (Case COMP/A.36.568/D), Commission	
Dec of 23 July 2004, not yet published.....	608, 611–13, 617, 632, 638
<i>TESN</i> , XXIInd Report on Competition Policy, p 426 .....	684
<i>Tetra LavallSidel</i> , OJ 2004 L43/13 .....	69
<i>Tetra Pak I</i> (BTG Licence), OJ 1988 L272/27 .....	76, 94–96, 135, 544
<i>Tetra Pak II</i> , OJ 1992 L72/1 .....	94, 97, 114, 249, 266, 285,
	302, 392, 479, 491, 494–95, 502, 508–9,
	569, 583, 647, 650–52, 680–81, 708, 716, 719, 731
<i>Tipp-Ex</i> , OJ 1987 L222/1 .....	472
<i>Trans-Atlantic Conference Agreement</i> (TACA), OJ 1999	
L95/1 .....	74, 110, 155–56, 160, 679, 711, 716, 718
<i>Tretorn</i> , OJ 1994 L378/45 .....	674
<i>Van den Bergh Foods Ltd</i> , OJ 1998 L246/1 .....	
	74, 87, 351, 357–58,
	360, 371–72, 492, 711
<i>Virgin/British Airways</i> , OJ 2000 L30/1 .....	74, 97, 115, 205, 220,
	224, 256, 375, 377, 383–84, 389–90, 394–95,
	400, 403, 553, 555, 595, 710, 713, 716
<i>Visa International</i> , OJ 2002 L318/17 .....	667
<i>Vitamins</i> , OJ 1976 L223/27 .....	87, 107, 358, 715–16
<i>Volkswagen</i> , OJ 2001 L262/14 .....	662
<i>Wanadoo Interactive</i> (Case COMP/C–38.233), Commission Dec of	
16 July 2003, not yet published.....	20, 70, 87, 99–100, 110, 182, 184,
	219, 245, 247, 249–51, 257–59, 271–74, 283, 285–88,
	292, 295–96, 318, 332–33, 335, 337, 710, 716, 719
<i>Warner-Lambert/Gillette</i> , OJ 1993 L116/21 .....	40–41, 86, 734
<i>Zanussi</i> , OJ 1978 L322/36 .....	665
<i>ZOJA/CSC ICI</i> , OJ 1972 L299/51 .....	681



## II. TABLE OF COMMISSION MERGER DECISIONS

<i>ABB/Daimler Benz</i> (Case IV/M.446).....	143
<i>Aérospatiale/Alenia/Havilland</i> (Case IV/M.53) .....	115
<i>Air Liquide/Messer Targets</i> (Case COMP/M.3314).....	158
<i>Airtours/First Choice</i> (Case IV/M.1524) .....	149–50
<i>Alcatel/Telettra</i> (Case IV/M.42).....	114
<i>Alcoa/Alumax</i> (Case IV/M.1161) .....	96
<i>Allied Signal/Honeywell</i> (Case COMP/M.1601) .....	726
<i>Astra Zeneca/Novartis</i> (Case COMP/M.1806) .....	75–76, 110
<i>Atlas/Phoenix/Global One</i> , OJ 1996 L239/23 .....	457, 589, 721, 726
<i>BASF/Eurodial/Pantochim</i> (Case COMP/M.2314) .....	89
<i>Behringwerke/Armour Pharmaceutical</i> (Case IV/M.495) .....	133
<i>BHP/Billiton</i> (Case COMP/M.2413).....	96
<i>Blokker/Toys 'R' Us (II)</i> (COMP/M.890), OJ 1998 L316/1 .....	640
<i>Boeing/Hughes</i> (Case COMP/M.1879).....	89
<i>BT/MCI</i> , OJ 1994 L223/36 .....	457, 589, 721
<i>Carrefour/Promodes</i> (Case COMP/M.1684), OJ 2000 C164/5 .....	165, 170, 640
<i>Cendant/Galileo</i> (Case COMP/M.2510) .....	164
<i>Coca-Cola Company/Amalgamated Beverages GB</i> (Case IV/M.794) .....	126
<i>Coca-Cola Company/Carlsberg</i> (Case IV/M.833).....	126
<i>Coca-Cola Company/Nestlé</i> (Case COMP/M.2776), OJ 2001 C308/13.....	135
<i>Credit Suisse Group/Donaldson, Lufkin &amp; Jenrette</i> (Case COMP/M.2158).....	111
<i>Crown Cork &amp; Seal/Carnaud/Metalbox</i> , OJ 1996 L75/38 .....	640
<i>CVC/Lenzing</i> (Case COMP/M.2187) 2004 OJ L82/20 .....	86
<i>Danish Crown/Vestjyske Slagterier</i> (Case COMP/M.1313) .....	90, 95
<i>De Beers/LVMH</i> (COMP/M.2333) 2003 O.J. L29/40 .....	75
<i>Du Pont/ICI</i> (Case IV/M.214).....	77, 111, 115
<i>Electrolux/AEG</i> (Case IV/M.458) .....	90–91, 114
<i>Enso/Stora</i> (Case COMP/M.1225) .....	130, 132
<i>Exxon/Mobil</i> (Case IV/M.1383).....	96
<i>Fiat Geotech/Ford New Holland</i> (Case IV/M.9).....	114
<i>General Electric/Amersham</i> (Case COMP/M.3304) .....	223, 504
<i>General Electric/Honeywell</i> (Case COMP/M.2220) .....	103, 512
<i>Generali/INA</i> (Case COMP/M.1712) .....	170
<i>Gencor/Lonrho</i> (Case IV/M.619) .....	86, 96, 148–49
<i>Glaxo Wellcome/SmithKline Beecham</i> , OJ 2000 C170/6 .....	540
<i>Granari-Üljel/May Holding</i> (Case IV/M.32) .....	73
<i>Guinness/Grand Metropolitan</i> (Case IV/M.938).....	126
<i>Hutchison/RCPM/ECT</i> (Case COMP/M.55) .....	126
<i>Imetall/English China Clays</i> (Case COMP/M.1381).....	89
<i>Industri Kapital (Nordkem)/DYNO</i> (Case COMP/M.1813).....	89
<i>Kesko/Tuko</i> (Case IV/M.784), OJ 1997 L174/47 .....	114, 165, 640
<i>Kimberley-Clark Scott</i> (Case IV/M.623) .....	126
<i>LVMH/PRADA/FENDI</i> (Case IV/M.1780) .....	75
<i>Mannesmann/Vallourec/Ilva</i> (Case IV/M.315) .....	86, 143
<i>MCI WorldCom/Sprint</i> (Case COMP/M.1741).....	115