

EC and UK Competition Law

Commentary, Cases and Materials

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School of Law, Queen Mary, University of London and
barrister of the Middle Temple



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To my great and wonderful parents

Preface

The competition rules of the EC and the UK have witnessed a phenomenal increase in significance over the years. The rules are bound together by a special relationship. Apart from the 'blood-tie' connecting them, they have developed in such a way that makes it absolutely vital for competition lawyers (a term I employ in a loose sense here to refer also to students), at least in the UK, to familiarise themselves with both. Indeed, the various developments which have taken place over the years, such as the enactment of the modernisation Regulation, Regulation 1/2003, have made this all the more important; thus it is quite difficult to study, specialise and focus on one set of rules without considering the other. The present book is intended to give proper recognition to this important fact.

While no book on this topic can claim to be comprehensive, it is hoped that this book will fill a gap in the market by providing detailed commentary with a broad selection of relevant extracts from cases, current EC and UK competition law provisions and official guidelines published by the relevant competition authorities. I have inserted no extracts from literature, whether books or articles published in legal journals. Some chapters however include a list of further reading which the reader may find useful to consult. The book includes case studies with model answers in order to give it an extra practical flavour. There are also diagrams and a flowchart which have been included to explain difficult concepts and ideas.

In preparing this book, I have received much appreciated help and support. I would like to thank my research assistants (and former students), Bruce McGinn and Christopher Lipka. Bruce was involved from an early stage and demonstrated a very sound understanding of competition law and an incredible ability to meet the very tight deadlines I often imposed. Christopher became involved later on and showed a strong and important dedication to the project.

In addition, I would like to express my warm gratitude to Dr Yoram Danziger, Dr Tamar Gidron, Professor Meir Heth, Professor Geraint Thomas and my many colleagues and friends in the world of competition law for their very generous encouragement and support. I am greatly indebted to two true friends and allies, Mr Christopher Brown and Mr Manish Das, who offered very helpful comments on the chapters. I also would like to thank the very friendly and able staff at Cambridge University Press. In particular, I would like to express my appreciation

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to Mrs Kim Hughes who offered me extremely valuable help and support. It has been my absolute pleasure to work with her.

Finally, my greatest debt goes to my parents, to whom I dedicate this book. Nothing I have achieved could have been possible without them.

I have aimed to state the law as it stood on 1 July 2004.

Guidance to reader

1. I have inserted no footnotes in the commentary. Footnotes in the book are those appearing originally in the extracted materials and every effort has been made to keep the original numbering, although not all footnotes have been reproduced.
2. The commentary contains no case citation. This was done in order to make the text easier to read. Cases appear by name in the commentary. The table of cases at the beginning of the book includes full citation and case name. Some cases are a bit unusual in the sense that they are widely known by a different name: for example the case of *A. Ahlström Osaakehtio v. Commission* which in some places in the commentary appears as 'Woodpulp'. The table of cases has been arranged in such a way that if the reader looks 'Woodpulp' up, he or she will be referred to *A. Ahlström Osaakehtio v. Commission* with the full citation.
3. Numbers and words appearing in square brackets in extracts and quotes reflect the renumbering of the EC Treaty and other changes and revision.
4. The book does not include chapters on either State Aid or the international aspect of Competition Law and policy. This should not (I hope!) be seen as a shortcoming given that (a) as far as students are concerned, the vast majority of courses on EC and UK competition law taught at different institutions do not include these topics in their syllabus, and (b) for other readers, including competition law practitioners and academics, handling work related to these topics does not really involve reading one or two chapters in a textbook devoted to the competition rules of the EC and the UK. Furthermore, in light of the phenomenal increase in their significance in recent years, these topics merit separate examination, especially since they have developed into 'autonomous' areas within the field of competition law. Squeezing them into two chapters of a book with a particular focus does not do them justice and is not quite beneficial. There is now an abundance of literature on the topics which the reader would be best advised to consult.
5. Certain EC cases have no European Court Reports (ECR) or Official Journal (OJ) citation, with only a Common Market Law Reports (CMLR) citation. One or two cases have no citation at all. This is because these were not available at the time the book went into production.
6. When the book went into production, the Office of Fair Trading (OFT) was still revising a number of its Competition Act 1998 guidelines. The extracted

materials from these include the latest version(s) as published by the OFT. I do not anticipate that any final changes which the OFT will make to these documents will affect the extracts in the book; however the reader may find it useful to consult the OFT's website for the most recent drafts of its guidelines: this is always good practice. The guidelines I am referring to are OFT400, OFT401, OFT402, OFT403, OFT404, OFT407, OFT414, OFT415, OFT418, OFT419 and OFT423, although not all of these are extracted in the book whether in full or in part.

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