Monopoly, Competition and the Law:

The Regulation of Business Activity in Britain, Europe and America

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WHEATSHEAF BOOKS • SUSSEX
ST. MARTIN'S PRESS • NEW YORK

First published in Great Britain in 1988 by
WHEATSHEAF BOOKS LTD
A MEMBER OF THE HARVESTER PRESS PUBLISHING GROUP
Publisher: John Spiers
16 Ship Street, Brighton, Sussex
and in the USA by
ST. MARTIN'S PRESS, INC.
175 Fifth Avenue, New York, NY 10010

British Library Cataloguing in Publication Data

Frazer, Tim
Monopoly, competition and the law: the regulation of business activity in Britain, Europe and America.
1. Competition—Government policy
I. Title
338.6'048 HD3611

ISBN 0-7450-0444-X

Library of Congress Cataloging in Publication Data
Frazer, Tim
Monopoly, competition and the law.

Bibliography: p.
Includes index.
1. Antitrust law—United States. 2. Antitrust law—European Economic Community countries. 3. Restraint of trade—European Economic Community countries. I. Title.
K 3856.F73 1988 343.4'072 87–28837
ISBN 0–312–01671–9 344.0372

Typeset in Times 11/12 point by Witwell Ltd, Liverpool
Printed in Great Britain by Billing and Sons Ltd, Worcester

Monopoly, Competition and the Law

To Jan

The functioning of competition not only requires adequate organisation or certain institutions like money, markets, and channels of information...but it depends above all on the existence of an appropriate legal system, a legal system designed both to preserve competition and to make it operate as beneficially as possible.

Hayek, *The Road to Serfdom* (1974)

Preface

Competition policy inhabits something of a no-man's land between the territories of economics and law. Lawyers trained in traditional legal scholarship are perhaps disquieted by the need to take account of economic principles, and economists are deterred by legal methodology. But this state of affairs is changing rapidly; competition law and policy is taking its place among the mainstream subjects in degree courses in economics and in law.

A number of factors have contributed to this change. A growing scholastic alliance between economics and law has fostered an interest in a closer interdisciplinary scrutiny of many policy areas. There have also been some excellent recent publications to assist the new students of competition policy. But perhaps most of all, competition policy has adopted a much higher profile in society at large. The 'mega merger' wave in the UK has placed the issue of corporate acquisitions on everyone's breakfast table. The daily revelations concerning the merger activities of Guinness, and news of the behaviour of corporate managers in the UK and the US have fuelled this growing interest.

As a result of these developments, there is a general realisation of the importance of competition policy as an aspect of economic regulation. It is the purpose of this book to explain the principles underlying the competition policies of the UK, the EEC, and the US, and the way in which these principles are put into practice. The administration of antitrust—its processes and bureaucracy—are as important as its underlying theories in fashioning the practical policy. These

three legal systems have been chosen because their contrasting styles and objectives highlight the often fierce debate concerning the proper goals and achievements of antitrust. The practical importance of these systems to firms and individuals throughout the trading world is beyond doubt.

I have attempted to write this book in a style which will appeal to both economists and lawyers, and I hope it will be of interest to students and practitioners of both disciplines. It is intended to be neither an encyclopaedia of competition law, nor a treatise on economic theory. It *is* intended to be a guide to the practice and application of a policy which is based on economics but which is effected through the law.

Competition policy does not stand still. In the UK, the government is undertaking a comprehensive review of its policy towards mergers and restrictive trade practices. In the US, there is speculation that the Wall Street scandals will precipitate a movement away from the permissive stance of Chicago economics, towards the closer regulation of business activity. These are exciting times!

Tim Frazer, February 1987

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