

Competition Law and Policy

in the European Community and United Kingdom



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CAVENDISH PUBLISHING LIMITED



COMPETITION LAW AND POLICY IN THE EC AND UK

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Cavendish
Publishing
Limited

London • Sydney

First published in 1999 by Cavendish Publishing Limited, The Glass House,
Wharton Street, London WC1X 9PX, United Kingdom

Telephone: +44 (0) 20 7278 8000 Facsimile: +44 (0) 20 7278 8080

E-mail: info@cavendishpublishing.com

Visit our Home Page on <http://www.cavendishpublishing.com>

© Rodger, BJ and MacCulloch, A 1999

Reprinted 2000

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Rodger, Barry

Competition Law

1. Competition – Law and legislation – Great Britain

I. Title II. MacCulloch, Angus

343.4'1'0721

ISBN 1 85941 392 7

Printed and bound in Great Britain

To Susan, Lucy and Niamh

PREFACE

Competition law, at both the European Community and United Kingdom levels, plays an ever increasing role in regulating the conduct of businesses. Competition law can affect business contracts, take-overs and mergers, co-ordinated actions, pricing behaviour and State subsidies. Competition law has assumed a crucial role in monitoring national and European markets, seeking to ensure workable competitive markets and, to a limited extent, 'fair play' on the level playing field created in the European Single Market. As businesses struggle to come to terms with the implications and impact of competition law, they require graduates to be aware of the significance and effect of the provisions of both national and European competition law. As competition law is loosely based on a mixture of economics and politics, and has tended to be enforced administratively, its basic tenets have proved difficult for students to understand and apply with confidence. This book seeks to provide a clear guide to, and outline of, the main provisions and policies shaping Community and UK competition law in a structured framework. The book is designed to be user friendly by encouraging the examination of competition law in context. It incorporates a glossary of useful terminology and sections at the end of each chapter for further reading and discussion. The book is aimed principally at any competition law students – both BA and LLB – as a course textbook, and will also be of assistance (as an introductory guide) for postgraduate students and practitioners of competition law.

Both authors have gained experience from their teaching of the subject, and have been particularly aware of the difficulty students have in grasping and understanding the core issues in competition law. The text places the law in context, using clear and relevant examples of the application of the competition rules. Understanding should be fostered by the provision of further reading and discussion issues at the end of each chapter. The glossary of terms is particularly important in an area of law which has links with economics. Students often find it difficult coming to terms with the technical language and terminology adopted, and the glossary aims to provide a helpful starting point in that process. The definitions and meanings provided are not intended to be technical and definitive statements on each issue.

The text analyses both Community and UK competition law developments. More emphasis will be placed on the former due to its relative importance and burgeoning case law. However, no competition law text in a UK context would be complete without analysis of UK competition policy and legal provisions. This is particularly important after the recent enactment of the Competition Act 1998. It is a crucial period for UK competition law during which the new provisions will be implemented. To that end, the text provides an outline coverage of the main aspects of the new legislation and its effect.

The book is not intended to be a competition law encyclopedia or practitioner reference book. It is designed to be an accessible introduction to Community and UK competition law which will provide suitable coverage for a full undergraduate competition law class. The focus is on key areas of policy

and practice in order to enhance student awareness of the substance, importance and effect of the competition rules. We have reversed the normal practice of dealing with anti-competitive agreements before the controls on monopoly. This reflects the concentration on the pure competition policy objective, based on its concern with monopolies, as a focus for all competition laws.

Three issues of substance need to be addressed when considering the continuing development of Community and UK competition law respectively. First, the Treaty of Amsterdam 1997 makes significant changes for competition lawyers by renumbering certain parts of the EC Treaty, including the main competition provisions, Arts 85, 86, 90 and 92–94. Throughout this book, the old numbering system is referred to, hopefully making it easier to follow case law, textbooks and articles on the topic. The table of comparison provides the reader with a simple conversion of the Treaty Articles referred to in the text which shall be modified. However, these changes will only come into effect when all Member States have ratified the Treaty, and it is uncertain how long this process will take.

NUMBER CHANGES FOLLOWING THE RATIFICATION OF THE AMSTERDAM TREATY

Old numbers	New numbers
Article 3	Article 5
Article 5	Article 10
Title V	Title VI
Article 85	Article 81
Article 86	Article 82
Article 90	Article 86
Article 92	Article 87
Article 93	Article 88
Article 177	Article 234

In the UK, continuing difficulties are likely to be caused by the transitional provisions in the Competition Act following commencement. These provide for the delayed effect of the Competition Act provisions and for the continued applicability of certain aspects of the restrictive trade practices legislation which was repealed under the 1998 Act. These transitional provisions are outlined, where appropriate, in the text, although readers are referred to Sched 13 to the Act, where the transitional provisions are fully laid out. Also,

in the UK context, there are potential implications for the new investigative and decision making powers, afforded to the Director General of Fair Trading under the Competition Act 1998, which are likely to follow the enactment of the Human Rights Act, mirroring the European Convention on Human Rights.

Finally, certain stylistic comments regarding the book's content are appropriate. Generally, the competition rules of the EC Treaty and, for example, the Merger Regulation shall be referred to as 'Community competition law'. In that context, where references are made to 'the Court', this shall refer generically to the European Court of Justice unless it is appropriate to make specific reference to either the Court of First Instance or the European Court of Justice. Similarly, generally in the book, we utilise the term 'companies' in a non-technical and generic sense to refer to commercial enterprises. However, where appropriate, we use the terminology of 'undertakings' which is now used in both Community and UK competition law and has a specialised meaning, outlined in Chapter 3. In making references to Community case law, we have adopted the form of giving the case number followed by the case name, and then where possible we have provided two alternative case report references, normally to the European Court Reports and Common Market Law Reports. Finally, in the context of UK Government publications, students should be aware of the different citations which have been adopted over the years in relation to Command publications, formerly referred to as Cmnd and now simply as Cm documents.

The authors would like to thank the following people for their support, advice and assistance: of course, we are grateful to Cavendish and, in particular, Jo Reddy and Iain Morris for having faith in our project; research assistants, David McGowan and, especially, Joanne McDowall, for their invaluable help in checking text and citations; Professor Alan Paterson, at Strathclyde University Law School, for his kind provision of funds to secure quality research assistants; Professor David Milman, Professor Martin Loughlin and John Tillotson for their support at the University of Manchester; David McLean, computer assistant at Strathclyde University, for helping to revive many crashed files; Lorna Balfour, of Clifford Chance, and Madame Anne Houtmann and Adinda Sinnaeve, both at the European Commission, for their co-operation on Chapter 5, 'Vertical Restraints', and Chapter 7, 'State Aid and State Regulation', respectively. Barry Rodger owes a debt of gratitude to John Huntley and Richard Whish who inspired his interest in competition law and the Carnegie Trust and SPTL for financial support during the period the book was completed. Finally, we would both like to thank all our colleagues and, in particular, those nearest and dearest for their encouragement and support during this project.

Barry J Rodger and Angus MacCulloch
November 1998

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