Subject Index

A American Home Products (AHP), 187, 188 Anti-Monopoly Law (AML), 62, 142, 143, 270, 369, 371, 372, 379, 381, 382, 384, 389Antitrust damages actions Commission's decision, 290 competition authority, 272 competition law, 271, 275, 280–83, 290 Damages Directive, 273 document disclosure, 273–84 European institutions, 272 information exchanges, 283–84 national procedural rules, 272 Autorità Garante della Concorrenza e del Mercato (AGCM), 10	Collusion, 137, 461, 473, 504, 544, 552, 562 industry, 236 information exchange, 237 LDP, 236–47 Russian pipe manufacturers, 235 self-incrimination, 237 Competition Commission of India (CCI), 249–59 Competition Commission of Singapore (CCS), 30, 32, 35, 40, 50 Competition law, 149–72, 369–89, 517–40, 541–67 electricity market, 594–95 environmental laws and policy, 593 Hong Kong electricity, 594 market liberalization, 595–99
B Binding Corporate Rules (BCRs), 91–92	Competition Law Investigations companies, 98–100
C China Light & Power (CLP) current submarine cable connecting, 591 economic sense, 474, 582 geographic market, 584 HEC, 573, 578, 590, 599 power grid, 583, 588 SOC agreement, 575, 577, 595 submarine cable connecting, 593 transmission networks, 582, 583 Chinese competition law, 142, 369–89	confidentiality and security of the processing, 88–89 Data Protection Directive, 85–86 data protection law and competition rules, 69 data protection stage controllers, 74–75 data subjects, 75 processors, 75 supervisory authorities, 76 EU and national level, 70–71 EU data protection legal framework, 71–73

'Subject Index'. World Competition 37, no. 4 (2014): 619–628. $\ \odot$ 2014 Kluwer Law International BV, The Netherlands

EU institutions and bodies, 86	Italian legislator, 127
international data transfers	Liberalization Decree, 127–28
BCRs, 91–92	provision rationale, 128-30
Bilateral International Agreements,	SIAE, 131–32
93–95	'teleological virtues', 124
consent and important public interest,	Italian reform, 122
92	techniques and media, 121–22
EEA, 90-91	traditional paradigm, 122–23
establishment, exercise/defence of legal	1 · · · · · · · · · · · · · · · · · · ·
claims, 92–93	D
key data protection principles	Damages Directive, 271, 272, 284, 286, 291,
BYOD, 85	315
compliance, legal obligation, 80	black list, 280–82
consent, 79	category, 277–78
Data Protection Directive, 76	competition authority, 279–80
data quality principle, 82	effective, proportionate and dissuasive
DG Competition's Antitrust Manual of	penalties, 283
Procedures, 77	general right to disclosure of documents,
DG Competition's Privacy Statement,	278–79
82	grey list, 282
Dutch competition, 84	white list, 282–83
French Supreme Court, 84	Document disclosure, EU law
lawfulness of processing, 78–79	Damages Directive, 277–83
legitimate interest, 80–81	English law, 284–86
Member States' laws, 86–87	French blocking statute, 287–89
non-compliance, data protection law,	National Grid case, 286–87
95–98	probative evidence, 273
'personal data' and 'processing', 73-74	transparency regulation
Privacy Statement, 86	Commission documents, 275, 276
registration, 89–90	private litigants, 274
rights of data subjects, 87–88	F
Competition Ordinance, 541, 542, 549–51,	E
554, 556, 557, 559, 565–567	EU Antitrust enforcement system
conduct rules, 543–46	administrative proceedings, 24
enforcement provisions, 547–48	AGCM, 10
exclusions and exemptions, 546–47	Article 101 infringements, 23
Copyright Societies under Scrutiny	Chalkor and Schindler cases, 19–20
collecting societies, 123	Common Market Law, 14
EU approach to the Italian solution	Competition and the Legal Service, 22
collective management still, 125	Court of Justice, 17–18
competitive copyright management	ECHR, 6
models, 124	ECSC Treaty, 12–13
ICA, 126	EFTA, 15
*	, , , , , , , , , , , , , , , , , , ,

European Court of Human Rights,	dominant undertakings
10–11	'effects-based', 424
'full jurisdiction', 12	efficient-competitor test, 428–32
General Court, 7	'form-based', 421–22
Jussila v. Finland, 8–10	negative effects, 424–25
Legal Service, 21	pro-competitive Justifications, 425-27
Merger Regulation, 13	relevant effects, 427-28
Microsoft case, 16	so-called more economic approach,
Regulation 1/2003, 11	422–24
Regulation 773/2004, 21	sound categorization, 422
review of legality, 12	economics use, Article 102 TFEU
TEU, 8	Charter of Fundamental Rights, 419
TFEU, 6	economic theories of competition,
EU competition fines	412–14
competition infringements, 436	integrate economic and legal analysis,
(dis)proportionate nature, 435	420–21
proportionality, judicial review	interpretation, 414–16
Commission, 457–58	lawyers vs. economists, 410-12
'competition policy', 455-56	objective, 417–18
General Court, 456–57	intel judgment
proportionality stricto sensu	AMD, 407
Article 49(3) of Charter, 454–55	CPUs, 406
conflicting interests, 452	microchip manufacturer, 405
fining guidelines, 450	microelectronic devices, 406
inability, pay fine, 452–53	so-called more economic approach
judicial abstention, 451	Intel judgment, 409–10
'scale'/'matrix', 449	Priorities Paper, 408–09
proportionality test	terminology, 410
description, 439–40	European Convention on Human Rights
'fine per infringement' approach,	(ECHR), 6–11, 14–16, 20, 21, 24,
441–42	63, 419, 456, 457
fining guidelines, 440–41, 443	European Merger Control Regulation
'gains improperly made', 444	(EUMR), 402, 488, 490–502,
'improper gains', 443–44	503–14
LRA, 445–48	Exclusionary intent, enforcement of Article
price difference, 444	102 TFEU
suitability, 440–42	anti-competitive collusion, 461–62
proportionality vs. deterrence	below-cost pricing, 475–76
competition enforcement, 436–38	cost-standard test, 474–75
disproportionate fines, 438–39	decisional practice, 462
EU General Court Judgment	description, 459–60
consumers and smaller companies,	enforcement considerations
432–34	CJEU, 484–85

commission guidance paper, 483–84	Hong Kong Electric Company (HEC),
sanctions and damages, 482–83	573, 575, 583, 584, 586, 591
intent evidence	and CLP, 577, 578, 595, 599
competition law, 470	electricity market, 582
'conceptual discordancy', 464	electricity supplier, 574
EU and US approaches, 466-67	power grids, 588, 590
evidentiary issues, 467-68	SOC agreements, 595
intent-sceptic approach, 465	transmission networks, 582
'special responsibility', 463	Hong Kong's electricity sector
'normal competition', 461	competition law, 593-99
predatory pricing, 471-74	electricity market, 570
recoupment, 477–78	environmental effects, 572
regulatory process, 481–82	EU competition law, 571
selective price cuts, 479–80	liberalization, 571, 580–93
•	regulatory reform, 569
F	regulatory regime
Fair, Reasonable and Non-discriminatory	capital investment plan, 578
(FRAND), 53–68	CLP, 573, 574, 575
Federal Trade Commission (FTC), 34, 60,	Competition Ordinance, 580
64, 150, 151, 175, 181, 182, 187–91,	consumers, 579
193, 199	Electricity Supply Companies
	Commission, 574
Н	Energy Advisory Committee, 573
Hong Kong Competition Law	Legislative Council, 579
blanket exclusion of statutory bodies,	legislators and local community,
556–59	577
cap for pecuniary penalty, 565-66	SOC agreements, 574–76
Chief Executive in Council, 559–60	US jurisdictions, 578
Competition Ordinance, 543-48	Ç
de minimis exclusions, 560-61	I
judicial enforcement model and	Indian merger control regime
restrictive private actions,	CCI, 252, 255
563–65	DBS, 254–55
lack of cross-sector merger control,	decisional practice, CCI
549–51	'delayed filings', 255, 258
legislative history, 542	'effects doctrine', 257
PRC, 542	international law, 256
public consultations and Legislative	'delayed filing', 254
Council, 541	mitigating factors, 255
second conduct rule, 554-56	reportable transactions, 250
substantial degree of market power,	statutory thresholds, 251
551–53	tire and wheel manufacturer, 253
warning notices, 562–63	Titan International, 253

'Innovation Market Analysis' (IMA), 146, 180, 183, 184, 185, 204–06 concentration and innovation, 196 framework/theoretical approach, 196 innovation competitors, 196–97 'market structure' and innovation, 198–99 missing theoretical basis, 200 R&D efforts, 195 US antitrust law, 194–95	traditional identification, 203 'unobservable' R&D projects Department of Justice, 184–85 'innovation market cases', 184 Northrop Grumman, 185–86 'perceived potential competition', 187 Italian Competition Authority (ICA), 10, 126–28, 130, 131
Innovation markets, future	J
Innovation markets, future markets/potential competition 'actual potential competition', 178, 183 anticompetitive effects, 174, 203 antitrust authorities, 174 applicability of approaches, 191–92 Astra/Zeneca, 181 competition authorities, 174, 200 competitors, 175 'creative destruction', 173 distinct approaches, 192 diverse market participants, 201 'diversity' and 'parallel research', 204 efficiencies, 205 European Commission (EC), 182 "firm affiliation", 202 FTC, 175 'future-'/'innovation markets', 183 'future markets' approach, 178–79 IMA, 180–81, 193 incentives and abilities, 203–04 merger cases, 181 Muris's statement, 194 'observable' R&D projects AHP, 187	Justifications and Anti-competitive Unilateral Conduct advantage, 48 applicable regulatory framework, 48 Australia, 31 Australian and Canadian cases, 36 below-cost pricing, 50 Brunswick case, 42–43 Canada, 31–32 Canada Pipe judgment, 41 CCS, 29–30 CJEU, 34–35, 45 comparative analysis, 28 competitive behaviour, 45–46 contextual analysis, 41, 42 description, 30–31 EU law, 46 European Union, 32 International Competition Network, 28 laissez-faire approach, 45 legal rules, 27 'legitimate business justification', 41–42 monopoly prices, 44 Olympia Equipment Leasing, 43
Ciba-Geigy/Sandoz, 189 European Commission, 191 FTC, 187–88 future product market, 190 'perceived potential competition', 177 'potential competition doctrine', 176 'potential competitor', 177 R&D projects, 183 Roche/Genentech decision, 182	Post Danmark judgment, 37 predation, 48–49–50 'pro-competitive business justification', 35 Queensland Wire judgment, 38 Sherman Act, 39 Singapore, 32–33 'socially beneficial', 40 South Africa, 33–34

deficiencies
CLP and HEC, 590, 591
Competition Commission, 592
electricity companies, 591
electricity market, 592
electricity sector, 593
Eastman Kodak v. Image Technical Services
585
economic sense, 474, 582
electricity sector, 580
European Court of Justice, 589
geographic market, 584
legitimate business justifications, 586
market power, 581
plaintiff competitor's, 587
pre-existing relationship, 585
submarine cable connecting, 588
Supreme Court, 586, 587
transmission network, 586
, • • •
M
Management studies
behavioural economics, 519
bounded rationality
behavioural theories, 525
competitive inertia, 525
learning and competitive process,
527–28
learning processes, 528
organizations, 529
principal-agent problem, 526–27
rational agents, 530
rational choice theory, 526
variation, retention and selection,
531–32
business strategists, 538
competition law, 518, 532–33
corporate executives, 522
corporate policy, 521
decision-making structure, 523
experimental evidence, framing effects,
518–19

managers and firms, 521	convergence, 495–96
managers' attitudes, 522	coverage, control and 'safe harbours'
market power, 533	concentration control systems, 507–08
merger control, 536–37	'material influence', 508
organizations, 524	SWD, 508–09
rationality assumption, 517	'undertakings concerned', 507
Market liberalization, 570, 571	domestic and EU company law, 493
electricity consumption, 595–97	economic theory, 494
pollution control technology, 597	EU and domestic jurisdiction, 514
switching to cheaper fuel, 597–99	EU merger control system, 487–88 EUMR, 488, 507
N	ex-ante method
National Commission on Markets and	one-stop-shop mechanism, 511
Competition (NCMC), 270	'self-assessment' systems, 512
Article 4 of the Organic Statute, 357	SWD and WP, 509–10
Audiencia Nacional, 351	'(targeted) transparency system', 512
cost saving, 354	'transparency system', 510
eight agencies, 365	ex-post system, 512–14
enforcement and promotion, 357	German merger control system, 496–97
institutional premises, 352	2014 impact assessment, 500
lack of consensus, 365	jurisdictions, 495
National Competition Commission, 352	laissez-faire approach, 503–04
Nature and Legal Status, 356-57	Laval/Sidel, 493
organization and operation	merger control, 490, 498
Competition Acts of 1963, 362	minority shareholdings, EU, 501
Competition Directorate, 361	Ryanair/Aer Lingus, 493
investigation directorates, 358	status quo, 488
recognized prestige and professional	substantive test, 514
capacity, 359	2013 SWD, 501–02
politicization, 366	Takeover Bids Directive, 494
socio-economic, 353	TFEU, 488
system performance and powers	treaty articles' enforcement priorities,
General State Budget, 364	504
mutatis mutandis, 363	UK concentration control system,
transparency and responsibility, 365	497–98
Net present value (NPV), 212–13	2014 white paper, 502-03
Non-controlling minority shareholdings	Zephyr Database, 500
Article 8, EUMR, 505–06	
Articles 101 and 102 TFEU, 491–92	P
BT/MCI case, 494	People's Republic of China (PRC), 542
burdens and costs, 498–500	Price Concentration Analysis (PCA), 270
2013 Commission consultation, 501	abuse of dominance, 339–40
competitive concerns, 495	adopting price, 326

category, 340	China instant messaging research report
choice of variables, 343-44	381
concentration, 327–29	Chinese competition law, 371–72
context of market, cinemas, 323	dynamically competitive industries
control variables, 330-31	economies of scale, 373-74
'cross-sectional' data, 321, 322	market, 374–75
data filtering, 342–43	Guangdong Court's ruling
data gathering, 341–42	establishing dominance, 379-81
data requirements, 324	relevant geographic market, 378-79
direct quantitative measure, 332	relevant product market, 376-78
econometric techniques, 320, 321, 332	instant messaging software product ('IM
endogeneity, 344–45	product') 'QQ', 369-71
linear relationship, 345–46	
market concentration, 320	S
market investigations, 322, 336-38	Scheme of Control (SOC), 569, 570,
mergers	574–79, 595, 599
CC' Optimax/Ultralase report, 335–36	Significant non-transitory decrease in the
CC' survey evidence, 335	quality (SSNDQ)
effect of entry and exit, 336	cautious approach, 157-58
European Commission, 335	'Cellophane fallacy', 159
margin-concentration analysis, 335	European Commission, 157
merging parties, 334	Facebook offers, 158-59
potential impact, market structure,	'free' internet services, 158
333–34	Single and continuous infringement of
'panel' data, 321–22	Article, 101
pricing data, 324–26	absolute requirements, 298
quantitative techniques, 319	anti-competitive practices, 294
regression model, 331	bananas, 302–04
relevant market definition, 338-39	bathroom fittings, 304-06
and SCP, 321	category, 296–97
'time series' data, 321	Commission's assessment, 295
UK and EU decisions, 332	Commission's decision, 309
'workhorse' of empirical methods, 320	Commission's evidential burden, 294
	complementary factors, 298-300
Q	controversial interpretation, 308
Qihoo/Tencent litigation	copper fittings, 306–07
AML, 369	description, 293-94
anti-monopoly case, 381	factors, 297
China and EU	International Removal Services, 306-07
dominance abuse case, 382-83	leniency applications, 296
dominant position, 387-88	persisting problems, 301
relevant geographic market, 385-87	practitioner's perspective
relevant product market, 383-85	leniency, 311–13

private actions for damages, 315–16 settlement, 313–15 Regulation 1/2003, 316–17 and single repeat infringements, 297 substantial period, 295	EU Courts, 64 innovative markets, 64 Motorola Mobility, 67 standard-essential technology, 66 pragmatic approach, 55
traditional challenges, 300–01	Statement of Objections, 55
Social media and competition law description, 152	USA, 59–61
dominance	State aid for rescue and restructuring aid beneficiaries, 207
Article 102 TFEU, 161–62	ailing companies, 221–22
data portability, 170–71	amount and instrument, 219–21
exploitative abuses, 162–63	commission communication, 232
forcing decisions, 163–64	companies located in assisted areas, 216
information shared online, 164-65	compensatory measures, 222
leveraging, 170	credible counterfactual, 233
market share, 159-60	economic insights and assumptions of
network, 160–61	model, 214–15
onerous deletion, 166–67	economics
tying and bundling, 167–70	conditions, 210
Facebook antitrust case, 151	EC, 210–11
Google case, 151	government intervention, 211
IT sector, 149–50	NPV, 212–13
market, 154	public intervention, 211
personal computer (PC), 150	RRG, 210
reasoning, 153	efficiency, 208
revenues, 155–56	EU rules, 207
SSNDQ, 156–59	information gathering and creation of
two-sided market, 154	database, 215
Spanish National Commission, 270	market failure, 207
act ex ante, 353	measurement, time, 216–17
Article 2.2 of the Act 3/2013, 357	member states, 218–19
European Commission, 350, 358 NCMC, 356–66	modernization, 207
Netherlands and Estonia, 355	objectives and conditions, 209–10 own contribution, 223
Preamble of Act 3/2013, 353	public policy objectives, 215–16, 233
Standard-Essential Patent (SEP), 2, 67–68	quantifiable distortion, 233
academic conversation, 54	subsidising employment
antitrust gun, 54	amount of aid, 225–27, 231
China, 61–63	annual salaries, 228
EU, 56–58	average across sectors, 224
and FRAND, 53–54	cost per worker, 227, 230
injunctive relief and vexatious litigation	medium-sized firms, 223
competition on the merits, 65	Member States, 229
* '	·

Structure-conduct-performance (SCP), 321

23, 24, 32, 58, 64–66, 95, 98, 161, 166, 170, 237, 239, 488

 \mathbf{T}

Treaty on European Union (TEU), 8 Treaty on the Functioning of the European Union (TFEU), 6, 7, 10–14, 18–20, \mathbf{v}

Value added network service (VANS), 48–49