

# INDEX

- abusive conduct 8.005–8.009, 8.044–8.051
  - damage caused by abusive
    - behaviour/counterfactual scenario 8.074–8.083
    - exclusionary abuse 8.078–8.083
    - exploitative abuse 8.075–8.077
  - economic actors damaged by
    - exploitative/exclusionary conduct 8.049–8.051
  - competitors as key victims 8.051
  - exclusionary abusive practice, parties harmed by 8.050
  - exploitative abusive practice, parties harmed by 8.049
  - purchasers of dominant firm harmed 8.051
- exclusionary abuse, types of damage caused by 8.048
- exploitative conduct, types of damage caused by 8.045–8.051
  - positive effects on competition 8.047
  - positive effects for purchasers through profit sacrifice 8.046
  - price discrimination effect on welfare 8.047
  - tying, effects of 8.047
  - welfare implications 8.045
- exploitative or exclusionary conduct 8.008
  - abuse of a dominant position 8.044
  - increases in prices 8.044
- illustration: quantification of damages in exclusionary abuse case 8.084–8.094
  - actors affected by exclusionary abuse 8.085
  - damage estimation in exclusionary abuse complex 8.084
    - phase one 8.086–8.087
    - phase two 8.088–8.089
    - phase three 8.090–8.094
  - primary goal to increase profits by softening competition 8.006, 8.008
  - quantifying damages in abusive conduct cases 8.074–8.094
    - damage caused by abusive behaviour/counterfactual scenario 8.074–8.083
    - illustration: quantification of damages in exclusionary abuse case 8.084–8.094
  - quantifying damages by
    - counterfactual/but-for scenario 8.009
  - restricted competition leading to welfare losses 8.005
- applicable law 7.092–7.130
  - competition-based litigation/Art 6(3) 7.099–7.101
    - no derogation 7.101
  - desirability of *lex fori* approach 7.114
    - reservations against 7.114–7.118
  - effects-based approach/Art 6(3)(a) 7.119–7.123
    - basis of 7.121
  - effects-based approach, problems with 7.124–7.127
  - functioning of Art 6(3)(b) 7.102–7.111, 7.119
    - application 7.104
    - ‘direct and substantial effect’, meaning of 7.106–7.110
    - limitations on application of *lex fori* 7.103–7.105
    - US law, compared 7.112–7.113
  - general rule/Art 4 7.097–7.098, 7.123
    - tort claims, approaches to 7.098
  - Mosaikbetrachtung*
    - concurrent matter of jurisdiction/applicable law, as 7.128–7.130
    - effects-based approach, problems with: 7.124–7.127

- Rome II Regulation and *lex fori* approach  
7.094–7.096  
Commission proposal for harmonisation  
7.094–7.095  
*see also* private international law aspects  
Ashurst study 0.09, 0.10  
assignment of claims 6.033, 6.150–6.156  
assignment model as synergistic approach  
to litigation 6.151
- Austria  
courts as ‘specialist authorities’ 5.64  
documentary evidence, access to  
4.028–4.030, 4.032  
autonomy *see under* Member States
- Belgium  
basis of damages actions for breach of EU  
competition law 2.47–2.49  
collective action scheme absent 6.072  
NCA, consultation of 5.72
- Bernheim, B. Douglas 8.058
- Brussels Convention (1968) 7.006, 7.007
- burden of proof  
infringement, proving 4.002  
*see also* proving the infringement  
passing-on in EU law 3.053–3.060  
burden on defendant 3.053–3.055,  
3.058–3.059  
question of fact, as 3.056–3.058  
shifting 3.056  
presumption of harm 5.13–5.14  
*see also under* individual countries
- cartels  
Commission settling 4.003  
contribution 5.79–5.80  
damage caused by cartels 8.005–8.043  
economic actors damaged by cartels  
8.020–8.035  
harm inflicted by cartels, estimation of  
8.002  
higher prices and lower quantities  
resulting 8.007  
illustration 8.036–8.043  
price/quantity effects accruing in vertical  
value chain 8.036–8.043  
restricted competition leading to welfare  
losses 8.005  
types of damage caused by cartels  
8.010–8.019  
economic actors damaged by cartels  
8.020–8.035  
downstream effects 8.029–8.031  
effects on producers of complements  
8.032  
horizontal effects 8.021  
non-horizontal and non-vertical effects  
8.021  
range of economic actors affected by  
anti-competitive conduct 8.023  
summary of effects analysis 8.033–8.035  
upstream effects 8.024–8.028  
vertical effects 8.021  
estimating number of cartels 8.002  
primary goal to increase profits by  
softening competition 8.006–8.007  
private litigants *see* private litigants’ access  
to documents in EU cartel actions  
quantification of damages in cartel cases  
8.053–8.073  
constructing counterfactual scenario  
8.054  
cost-based approach *see* cost-based  
approach  
cross-sectional analysis *see* cross-sectional  
analysis  
difference-in differences method *see*  
difference-in differences method  
nature of counterfactual scenario 8.053  
profitability-based approach *see*  
profitability-based approach  
quantifying damages by counterfactual/  
but-for scenario 8.009  
simulated comparator markets *see*  
simulated comparator markets  
time series analysis *see* time series analysis  
types of damage caused by cartels  
8.010–8.019  
cartel-induced price increases, substantial  
variance in 8.019  
cartelisation leading to transfer of wealth/  
inefficiencies 8.010–8.012  
extent of price increase or quantity  
reduction 8.014–8.015

- magnitude of damage dependent on  
     range of factors 8.013  
 market characteristics, cartels changing  
     8.017  
 mark-ups/overcharge calculations,  
     empirical studies on 8.018  
 productive and dynamic inefficiencies  
     8.016, 8.017  
 quantity effects neglected 8.018  
 causation 5.03–5.06  
     but-for test 5.03  
     choice of court 7.050–7.051  
     complexity of issue 5.06  
 choice of court *see under* private international  
     law aspects  
 Civil Justice Council 6.026  
 civil law damages actions for breach of EU  
     competition law 2.24–2.61  
     Germanic systems of law 2.24–2.46  
         Denmark 2.24–2.25  
         Germany 2.26–2.32  
         Greece 2.33–2.35  
         Latvia 2.36–2.38  
         Lithuania 2.39–2.43  
         Netherlands 2.44–2.46  
     Romanistic systems of law 2.47–2.61  
         Belgium 2.47–2.49  
         France 2.50–2.54  
         Italy 2.55–2.59  
         Spain 2.60–2.61  
 collective action/redress 6.001–6.173  
     assignment of claims 6.033, 6.150–6.156  
     collective action at EU level 6.034–6.071  
         collective action as a matter of EU law  
             6.034–6.040  
         EU policy developments 6.041–6.071  
     collective action as matter of EU law  
         6.034–6.040  
     consumer injunctions 6.038  
     data protection rules 6.040  
     IPRs protection Directive 6.039  
     unfair terms in consumer contracts 6.037  
 effective complement to public  
     enforcement, as 6.002, 6.003  
 EU policy developments 6.041–6.071  
     Commission's consultation paper (2011)  
         6.057–6.060  
     Commission's joint information note  
         6.055–6.056  
     Commission proposal/2013 collective  
         redress initiative 6.061–6.071  
     draft Directive 6.051–6.054  
     Green Paper 6.044–6.046  
     preference for horizontal approach 6.043  
     White Paper 6.047–6.050  
 Member States, collective action in  
     6.072–6.156  
     collective action introduced 6.004  
     collective action schemes, absence of  
         6.072  
     Denmark 6.127–6.134  
     divergent systems as obstacle to  
         inter-Member State action 6.004  
     effective redress not always provided  
         6.006  
     France 6.142–6.147  
     Italy 6.148–6.149  
     limitations on who can bring claims  
         6.005  
     Netherlands *see under* Netherlands  
     opt-in and opt-out systems 6.005, 6.017  
     Sweden 6.135–6.141  
     UK *see under* United Kingdom  
 opt-in collective action 6.005, 6.015–6.024  
     advantages 6.019–6.021  
     drawbacks 6.022–6.024  
     EU policy preference for 6.017  
     nature of 6.018  
     standing 6.015, 6.016  
 opt-out collective action 6.005,  
     6.025–6.032  
     advantages 6.026  
     disadvantages 6.027–6.032  
     nature of 6.025–6.026  
     standing 6.015, 6.016  
 rationale for collective action 6.008–6.013  
     administrative advantages 6.012  
     compensation and deterrence objectives,  
         attaining 6.013  
     correlation between no collective action/  
         sub-optimal enforcement 6.008  
     importance in balancing resources/  
         claimants' bargaining positions  
         6.010

- positive impact on litigation by
  - consolidating actions 6.009
  - 'rational apathy problem', overcoming 6.009
  - tactical litigation risk, avoiding 6.011
- terminology 6.014
- US, class actions in *see under* United States (US)
- comity principle
  - nature of 4.066
  - resisting disclosure, reliance on 4.065–4.067
- Commission, EU
  - cartel cases
    - extensive resources required 4.003
    - settling under settlement programme 4.003
  - see also* cartels
  - collective action 5.23
    - consultation paper (2011) 6.057–6.060
    - draft Directive 6.051–6.054
    - Green Paper 6.044–6.046
    - Impact Assessment 6.027
    - joint information note 6.055–6.056
    - minimal harmonised requirements, proposals for 6.041
    - opt-out system, main arguments against 6.027
    - policy initiatives 6.003
    - proposal/2013 collective redress initiative 0.10, 6.061–6.071
    - recommendation 0.10, 6.003, 6.013, 6.043, 6.061–6.068
    - White Paper 6.047–6.050
  - see also* collective action/redress
  - consultation of 5.65
  - decisions of Commission/Art 9
    - Regulation 1/2003 4.086–4.087
    - commitment decisions, nature of 4.086
    - evidential value 4.087
    - not proof of infringement in follow-on actions 4.087
  - decisions of Commission/Art 16
    - Regulation 1/2003 4.072–4.081
    - effect of Art 16(1) 4.074
  - interconnection between procedural aspects/appeal on substance 4.079–4.081
  - judgment of English Court of Appeal in *Crehan* 4.082–4.085
  - negative duty of abstention 4.074
  - scope of rule 4.075–4.078
  - see also* evidential value of prior administrative decisions
  - disclosure
    - Commission documents, access to *see under* documentary evidence, access to
    - documents held by national competition authorities 4.032–4.034
    - limiting discoverability in US courts *see under* United States (US)
    - proposals for disclosure 4.059–4.060
  - draft Directive
    - burden of proof to establish passing-on 3.054
    - collective action 6.003, 6.051–6.054, 6.069–6.070
    - indirect purchaser standing 3.033–3.034
    - limitation periods 5.47, 5.48
    - passing-on defence 3.065
    - withdrawal 0.09–0.10
  - exemplary damages 5.23
  - Green Paper 0.09, 5.23, 5.82
    - collective action 6.044–6.046
  - harmonisation of rules on non-contractual obligations 7.094–7.095
  - indirect purchaser standing 3.032–3.036
    - rebuttable presumption of passing-on 3.034–3.036
    - stand-alone and follow-on actions 3.034
  - leniency programmes *see* leniency/leniency programmes
  - national courts, cooperation with 7.008
  - passing-on defence 3.064–3.066
  - private enforcement initiative 0.08–0.14
    - Ashurst study 0.09, 0.10
  - proposal, legislative 0.10, 3.054, 3.068
    - burden of proof to establish passing-on 3.054
  - causation 5.06
  - contribution *see under* contribution

- damages, measure of 5.07, 5.12
- documents held by national competition authority, disclosure of 4.032–4.034
- evidence proposals 4.059–4.060
- indirect purchaser standing 3.035
- limitation periods 5.49–5.53
- NCA decisions, evidential value of 4.088
- partial passing-on 3.063
- passing-on defence 3.066
- Regulation 44/2001
- Art 28, Commission proposal and 7.077–7.080
- Commission review of 7.083–7–7.085
- White Paper 0.09, 2.63
- burden of proof to establish passing-on 3.054
- collective action 6.047–6.050
- indirect purchaser standing 3.032, 3.033
- passing-on defence 3.064
- common law damages actions for breach of
- EU competition law 2.19–2.23
- England and Wales 2.19–2.21
- Ireland 2.22–2.23
- compensation as policy objective
- collective action 6.002, 6.013
- indirect purchaser standing and passing-on 3.005, 3.008
- competition culture 6.002, 6.042
- competition enforcement in the EU 0.07
- antitrust enforcement by public enforcement authority 0.04, 0.07, 6.001
- decentralisation of enforcement of antitrust rules 0.08
- private enforcement *see* private enforcement
- public enforcement, meaning of 0.07
- see also* public authorities/public enforcement
- modernisation of 0.08
- compounding and discounting damages 8.095–8.098
- Connor, John M. 8.018
- consumers
- collective action *see* collective action/redress
- consumer injunctions 6.038
- unfair terms in consumer contracts 6.037
- contribution
- Commission's proposal on contribution 5.78–5.87
- cartel settlements 5.79–5.80
- determining contribution 5.78
- leniency, application to *see under* leniency/leniency programmes
- national law system of contribution 5.78
- immunity recipients, contribution claims against 5.86
- joint and several liability 5.76–5.80, 5.86
- UK 5.77
- cost-based approach 8.069–8.071
- comparator-based approaches, as 8.069
- variable costs 8.069–8.070
- counterfactual scenarios *see under* abusive conduct; cartels
- cross-sectional analysis 8.061–8.064
- advantages and disadvantages 8.064
- nature of 8.062
- regression techniques 8.063
- Cyprus
- collective action scheme absent 6.072
- exemplary damages 5.24
- Czech Republic
- collective action scheme absent 6.072
- damages, measure of 5.07–5.46
- Commission proposal 5.07
- exemplary damages 5.21–5.46
- EU law 5.22–5.23
- national law 5.24–5.46
- nature of 5.21
- UK *see under* United Kingdom (UK)
- presumption of harm 5.13–5.20
- burden of proof on defendant 5.13–5.14
- EU law 5.17
- impact of 5.14–5.16
- national law 5.18–5.20
- types of damage recoverable 5.08–5.12
- 'lost sales effect' 5.08–5.10
- pecuniary loss 5.08
- restitutio in integrum* (actual loss/loss of profit) 5.11–5.12, 5.24, 5.34
- damages, quantification of 8.001–8.112

- abusive conduct, damages caused by *see*
  - under* abusive conduct
- approach for determining damage,
  - comparator-based 8.052
- cartels, damages caused by *see under* cartels
- damages caused by abusive
  - behaviour/counterfactual scenario 8.074–8.083
  - exclusionary abuse 8.078–8.083
  - exploitative abuse 8.075–8.077
- further aspects of damage quantification 8.095–8.100
- accuracy of statistical methods 8.101–8.103
- compounding and discounting damages 8.095–8.098
- estimation of after-effects 8.099–8.100
- remoteness and causality 8.104–8.108
- illustration: quantification of damages in
  - exclusionary abuse case 8.084–8.094
- actors affected by exclusionary abuse 8.085
- damage estimation in exclusionary abuse
  - complex 8.084
  - phase one 8.086–8.087
  - phase two 8.088–8.089
  - phase three 8.090–8.094
- magnitude of damage caused by
  - competition law violations 8.002
- need to calculate specific level of damages for each victim 8.052
- quantification of damages in abusive
  - conduct cases 8.074–8.094
  - damage caused by abusive behaviour/counterfactual scenario 8.074–8.083
  - illustration: quantification of damages in exclusionary abuse case 8.084–8.094
- quantification of damages in cartel cases 8.053–8.073
- constructing counterfactual scenario 8.054
- cost-based approach *see* cost-based approach
- cross-sectional analysis *see* cross-sectional analysis
- difference-in differences method *see* difference-in differences method
- nature of counterfactual scenario 8.053
- profitability-based approach *see*
  - profitability-based approach
- quantifying damages by counterfactual/ but-for scenario 8.009
- simulated comparator markets *see* simulated comparator markets
- time series analysis *see* time series analysis
- damages, underlying right to 2.01–2.71
  - national law bases for damages actions for breach of EU competition law 2.18–2.71
  - civil law 2.24–2.61
  - see also* civil law damages actions for breach of EU competition law
  - common law 2.19–2.23
  - see also* common law damages actions for breach of EU competition law
  - national law analysis: the fault requirement 2.68–2.71
  - tortious nature of litigation for breach of EU competition law 2.62–2.68, 7.004
  - right to damages as matter of EU law:
    - Crehan* 2.03–2.17
    - further developments: *Manfredi* judgment 2.16–2.17
    - proceedings in the English courts 2.03–2.11
    - UK reference to ECJ 2.12–2.15
- data protection 6.040
- deference
  - deference to Commission decisions 4.082–4.083
  - loyal cooperation principle 4.082
- Denmark
  - basis of damages actions for breach of EU competition law 2.24–2.25
  - choice of court 7.007
  - collective action 6.127–6.134
  - hybrid collective action system 6.017
- deterrence as policy objective
  - collective action 6.002, 6.010, 6.013
  - indirect purchaser standing and passing-on 3.006, 3.008, 3.009, 3.016
- difference-in differences method 8.065–8.066
- data constraints 8.086

- disadvantages 8.066
- nature of 8.065
- 'direct and substantial effect', meaning of
  - 7.106–7.110
  - US 7.112–7.113
- direct effect 1.14, 2.08, 3.029
- discounting and compounding damages
  - 8.095–8.098
- documentary evidence, access to
  - access to documents held by Commission
    - 4.006–4.020
  - cartel damages actions 4.008–4.020
  - access to documents held by defendants
    - 4.036–4.056
  - civil law systems 4.036
  - common law system 4.036, 4.037–4.056
  - access to documents held by national
    - competition authorities 4.021–4.035
    - Commission proposal on disclosure
      - 4.032–4.033
    - national courts, role of 4.025, 4.029,
      - 4.034
  - access to documents held by third parties
    - 4.057–4.058
  - Commission's proposals on evidence
    - 4.059–4.060
    - proposal to introduce common law
      - system 4.059
    - role of national courts 4.060
  - Evidence Regulation 4.050–4.056
  - formal discovery system in EU law absent
    - 4.006, 4.036
  - leniency programmes *see under*
    - leniency/leniency programmes
  - public access to documents held by EU
    - institutions 4.006–4.007, 4.036
    - exceptions to general right of access
      - 4.007, 4.012–4.020
    - rules on 4.007
- domicile of parties
  - inside the EU 7.007, 7.016–7.019, 7.042
  - outside the EU 7.013–7.015
    - application of *lis pendens* 7.081–7.082
    - litigation involving parties outside EU
      - 7.086–7.091
- dominant position, abuse of *see under* abusive
  - conduct
- effectiveness principle 1.01, 1.03
  - causation 5.06
  - collective action systems discouraging
    - claims 6.006
  - damages, measure of 5.07, 5.12
    - compensatory damages 5.34
    - limitation periods 5.47
  - effet utile* 2.15
- equivalence principle 1.01, 1.03
  - causation 5.06
  - limitation periods 5.47
- Estonia
  - collective action scheme absent 6.072
  - NCA, consultation of 5.74
- European Convention of Human Rights
  - (ECHR)
    - access to justice (Art 6) 6.030
- European Court of Justice (ECJ)
  - case law on remedies 1.01–1.06
  - collective action 6.034–6.035
  - documentary evidence *see* documentary
    - evidence, access to
  - establishment of right to damages as
    - matter of EU law: *Crehan* 2.12–2.15
    - further developments: *Manfredi*
      - judgment 2.16–2.17
    - indirect purchaser standing 3.029–3.030
  - exemplary damages 5.22
  - founding jurisdiction in tortious actions
    - 7.023–7.025
    - application of *Bier/Shevill* jurisprudence
      - 7.026–7.036
    - Art 5(3) as basis for torpedo litigation
      - 7.037–7.041
  - negative duty of abstention, doubtful cases
    - of 4.074
  - no jurisdiction in private party actions for
    - breach of competition law 1.02
  - passing-on defence 3.037–3.043
    - partial passing-on 3.061–3.063
    - unjust enrichment, and 3.037,
      - 3.044–3.052
  - references to ECJ by national courts 5.65
  - teleological style of argumentation 2.07
- Evidence Regulation 4.050–4.056
- evidential value of prior administrative
  - decisions 4.071–4.109

- Commission decisions/Art 9 Regulation  
 1/2003 4.086–4.087  
 commitment decisions, nature of 4.086  
 evidential value 4.087  
 not proof of infringement in follow-on  
 actions 4.087
- Commission decisions/Art 16 Regulation  
 1/2003 4.072–4.081  
 effect of Art 16(1) 4.074  
 interconnection between procedural  
 aspects/appeal on substance  
 4.079–4.081  
 judgment of English Court of Appeal in  
*Crehan* 4.082–4.085  
 negative duty of abstention 4.074  
 scope of rule 4.075–4.078
- NCA decisions 4.088–4.109  
 Commission proposal 4.088  
 Germany 4.104–4.108  
 no rule as to evidential value in private  
 litigation 4.088, 4.089  
 Romanistic jurisdictions 4.109  
 UK 4.090–4.103  
 prior administrative infringement decision  
 as proof of infringement 4.071  
 evidentiary issues *see* proving the infringement  
 exclusionary abuse *see under* abusive conduct  
 exemplary damages *see under* damages,  
 measure of  
 exploitative abuse *see under* abusive conduct
- Finland  
 NCA, consultation of 5.73  
*forum non conveniens* doctrine 7.008, 7.009
- France  
 basis of damages actions for breach of EU  
 competition law 2.50–2.54  
 competition law damages actions as  
 claims in tort 2.68  
 fault requirement for non-contractual  
 claim satisfied by illegality 2.70  
 collective action 6.142–6.147  
 disclosure  
 documentary evidence, access to 4.031  
 French blocking statute 4.049–4.055  
 indirect purchaser standing and passing-on  
 3.081–3.083  
 burden of proof 3.083  
 admissibility of passing-on defence 3.083  
 NCA, consultation of 5.69–5.71  
 NCA decisions, evidential value of 4.109
- Germany  
 basis of damages actions for breach of EU  
 competition law 2.26–2.32  
 competition law damages actions as  
 claims in tort 2.68  
 intention or negligence, proof of 2.28,  
 2.71  
 collective action  
 assignment of claims 6.152–6.155  
 opt-out actions prohibited 6.029  
 documentary evidence, access to  
 4.021–4.027  
 exemplary damages 5.24  
 indirect purchaser standing and passing-on  
 3.074–3.080  
 availability of 3.075–3.078  
 burden of proof 3.079–3.080  
 limitation periods 5.48, 5.62–5.63  
 suspending 5.62, 5.63  
 NCA, consultation of 5.68  
 NCA decisions, evidential value of  
 4.104–4.108  
 courts bound by decisions 4.104–4.105  
 presumption of harm 5.18  
*Schutznorm* concept 2.08
- Greece  
 basis of damages actions for breach of EU  
 competition law 2.33–2.35  
 harm, presumption of *see under* damages,  
 measure of  
 harmonisation of remedies 1.09, 1.15  
 draft proposal for harmonising regulation  
 1.16  
 Hovenkamp, Herbert 3.015
- Hungary  
 damages/presumption of loss 5.19  
 indirect purchaser standing and passing-on  
 3.001–3.111  
 EU law 3.014, 3.018, 3.028–3.066, 3.068  
 burden of proof to establish passing-on  
*see under* burden of proof



- Commission's position on indirect standing *see under* Commission, EU
- indirect purchaser standing 3.014, 3.029–3.031
- partial passing-on 3.061–3.063
- passing-on defence 3.037–3.043
- passing-on defence and unjust enrichment 3.037, 3.044–3.052
- indirect purchaser, definition of 3.012
- indirect purchaser standing 3.001, 3.011–3.021
- EU approach 3.014, 3.018, 3.029–3.031, 3.068
- evidentiary obstacles, overcoming 3.019–3.020
- importance of 3.013
- judicial and academic controversy 3.014–3.017
- remoteness of claims 3.013
- representative/class actions 3.018
- national law 3.067–3.088
- England and Wales 3.069–3.073
- France 3.081–3.083
- Germany 3.074–3.080
- Italy 3.084–3.088
- passing-on defence 3.022–3.027
- consequences of invoking defence 3.024–3.027
- consequences of not recognising defence 3.025
- passing-on, nature of 3.023
- unjust enrichment, avoiding 3.025
- theoretical underpinnings 3.001–3.027
- awarding damages to different levels of claimants 3.001–3.003, 3.009
- clash of policy objectives 3.004, 3.008–3.010
- compensation/fairness as policy objective 3.005, 3.008
- deterrence as policy objective 3.006, 3.008, 3.009, 3.016
- economical litigation as policy objective 3.007, 3.008
- indirect purchaser standing 3.001, 3.011–3.021
- passing-on defence 3.022–3.027
- US *see under* United States (US)
- infringement, proving *see* proving the infringement
- IPRs protection Directive 6.039
- Ireland
- basis of damages actions for breach of EU competition law 2.22–2.23
- courts as 'specialist authorities' 5.64
- disclosure/discovery of documents 4.036
- exemplary damages 5.24
- Italy
- basis of damages actions for breach of EU competition law 2.55–2.59
- collective action 6.148–6.149
- indirect purchaser standing and passing-on 3.084–3.088
- claims by indirect purchasers in theory applicable 3.087
- defence of passing-on not specifically recognised 3.085–3.086
- NCA decisions, evidential value of 4.109
- joint and several liability 5.75–5.87
- contribution 5.76–5.80, 5.86
- UK 5.77
- Commission's proposal on contribution 5.78–5.87
- cartel settlements 5.79–5.80
- determining contribution 5.78
- leniency, application to *see under* leniency/leniency programmes
- national law system of contribution 5.78
- meaning of 5.75
- Lande, Robert H. 8.018
- Landes, William M. 3.009, 3.010, 3.016
- Latvia
- basis of damages actions for breach of EU competition law 2.36–2.38
- collective action scheme absent 6.072
- legal framework 1.01–1.18
- application to damages actions for breach of EU competition law 1.17–1.18
- case law of ECJ on remedies 1.01–1.06
- doctrines of equivalence and minimum effectiveness 1.01, 1.03
- private actions for breach of EU competition law 1.05, 1.06
- rights to remedies, move from 1.07–1.16

- direct rights 1.11–1.13, 1.17
- directly effective rights 1.14
- distinguishing between rights and remedies 1.09
- fixing boundaries between remedial/procedural rules *sensu stricto* 1.15–1.16
- procedural autonomy principle 1.07
- remedies and pure rights and obligations 1.11, 1.12, 1.13
- rights to enforce 1.10–1.13, 1.17
- leniency/leniency programmes 4.007, 4.011, 4.023–4.024
- balancing exercise to be carried out 4.029, 4.034
- Commission proposal 4.032
- Commission's attempts to limit discovery in US courts 4.061–4.070
- importance of leniency programmes recognised 4.067–4.069
- reliance on comity 4.065–4.067, 4.070
- joint and several liability 5.81–5.87
- conditional rebate 5.82
- contribution claims against immunity recipients 5.86
- immunity recipients, liability of 5.85
- immunity recipients, protection afforded to 5.84
- leniency documents not held by third parties 4.057
- national leniency programmes 4.042–4.048
- policy considerations behind leniency 5.32
- safeguarding effectiveness of 4.024–4.027, 4.030
- lex fori*
  - desirability of *lex fori* approach 7.114
  - reservations against 7.114–7.118
  - limitations on application of *lex fori* 7.103–7.105
  - Rome II Regulation, and 7.094–7.096
  - Commission proposal for harmonisation 7.094–7.095
- liability
  - immunity recipients, liability of 5.85
  - joint and several *see* joint and several liability
  - strict liability 2.69, 2.70
  - limitation periods 5.47–5.63
  - EU law 5.47–5.53
    - proposal, limitation period in 5.49–5.53
    - rules on limitation periods determined by national law 5.47, 5.54
  - national law
    - Germany 5.48, 5.62–5.63
    - UK 5.48, 5.50, 5.55–5.61
  - lis pendens*
    - application to parties domiciled outside the EU 7.081–7.082
    - forum shopping 7.053
    - multiple litigation, addressing 7.053
    - Regulation 44/2001, Art 27 of 7.054, 7.055–7.062, 7.063, 7.064
    - connected but not identical actions 7.070–7.071
    - Regulation 44/2001, Art 28 of 7.012, 7.054, 7.063–7.065
    - Commission proposal, and 7.077–7.080
    - connected but not identical actions 7.068–7.069
    - English authorities on 7.072–7.076
    - irreconcilability for purposes of Art 28(3) 7.066–7.067
    - Regulation 44/2001, Commission review of 7.083–7.085
  - Lithuania
    - basis of damages actions for breach of EU competition law 2.39–2.43
  - loyal/sincere cooperation principle 2.07
  - deference to Commission decisions 4.082
  - Luxembourg
    - collective action scheme absent 6.072
  - measure of damages *see* damages, measure of
  - Member States
    - autonomy in procedure and remedies 1.01, 1.07, 1.15, 6.004
    - equivalence and minimum effectiveness conditions 1.01
    - general obligation to ensure effectiveness of EU law 1.01, 1.04
    - harmonisation of remedies 1.09, 1.15
    - collective action in Member States 6.072–6.156

- collective action introduced 6.004
- collective action schemes, absence of 6.072
- Denmark 6.127–6.134
- divergent systems as obstacle to inter-Member State action 6.004
- effective redress not always provided 6.006
- France 6.142–6.147
- Italy 6.148–6.149
- limitations on who can bring claims 6.005
- Netherlands *see under* Netherlands
- opt-in and opt-out systems 6.005, 6.017
- Sweden 6.135–6.141
- UK *see under* United Kingdom
- see also* collective action/redress
- damages actions for breach of EU competition law *see* damages, underlying right to
- EU law ensuring effective protection of individuals' rights against 1.05
- indirect purchaser standing/passing-on *see* indirect purchaser standing and passing-on
- national competition authorities *see* national competition authorities (NCAs)
- national courts *see* national courts
- national law *see* individual countries
- minimum effectiveness *see* effectiveness principle
- national competition authorities (NCAs) 0.08, 4.004
- access to documents held by *see under* documentary evidence, access to
- consultation of 5.66–5.74
- France 5.69–5.71
- Germany 5.68
- other jurisdictions 5.72–5.74
- UK 5.67
- evidential value of prior administrative decisions 4.088–4.109
- Commission proposal 4.088
- Germany 4.104–4.108
- no rule as to evidential value in private litigation 4.088, 4.089
- Romanistic jurisdictions 4.109
- UK 4.090–4.103
- see also* evidential value of prior administrative decisions
- national courts 0.08
- Commission decisions, and *see* evidential value of prior administrative decisions
- Commission's proposals on evidence 4.059–4.060
- cooperation with Commission 7.008
- direct effect 1.14
- disclosure applications
- balancing exercise in 4.029, 4.034
- wide margin of discretion in 4.025
- expertise, recourse to *see* recourse to expertise of public authorities by national courts
- giving effect to EU law rights and obligations 1.01
- private damages claims 1.05, 1.06
- references to ECJ 5.65
- national law *see* individual countries
- ne bis in idem* principle 5.29–5.30
- Netherlands
- basis of damages actions for breach of EU competition law 2.44–2.46
- choice of court/application of Art 6(1) 7.052
- collective action 6.110–6.126
- Art 3:305a Burgerlijk Wetboek 6.111–6.112
- assignment of claims 6.156
- bundled claims 6.113–6.116
- Wet Collectieve Afhandeling Massaschade (2005) 6.117–6.126
- Commission decisions/Art 16 Regulation 1/2003 4.079–4.081
- opt-out collective action system 6.017
- passing-on *see* indirect purchaser standing and passing-on
- Portugal
- opt-out collective action system 6.017
- Posner, Richard A. 3.009, 3.010, 3.016, 8.018

- presumption of harm *see under* damages,  
 measure of
- prices *see under* abusive conduct; cartels
- prior administrative decisions *see* evidential  
 value of prior administrative decisions
- private enforcement  
 Commission's private enforcement  
 initiative *see under* Commission, EU  
 damages  
 actions for breach of EU law committed  
 by another individual 1.05, 1.06  
 measure of damages *see* damages, measure  
 of
- EU law not providing substantive or  
 procedural rules in private disputes  
 1.02, 1.04
- increased interest in 0.08
- indirect purchasers *see* indirect purchaser  
 standing and passing-on
- individual rights  
 access to court and to class of action to  
 protect right 1.10  
 direct rights 1.11–1.13, 1.17  
 establishing causal relationship,  
 difficulties of 3.030  
*see also* causation  
 rights to enforce 1.10–1.13, 1.17  
 meaning of 0.07  
 obligations imposed on private  
 undertakings 1.08, 1.18  
 procedural issues in private actions 0.12,  
 0.13  
 proliferation of competition law damages  
 actions likely 0.13  
 proving the infringement *see* proving the  
 infringement  
 settlement of actions before final decision,  
 frequent 0.11
- private international law aspects 7.001–7.130  
 applicable law *see* applicable law  
 choice of court 7.005–7.091  
 Art 5(3) as basis for torpedo litigation  
 7.037–7.041  
*Bier/Shevill* jurisprudence and  
 competition-based litigation  
 7.026–7.036  
 causation 7.050–7.051  
 choices of court, variety of 7.010–7.012  
 Commission proposal and Art 28  
 7.077–7.080  
 connected but not identical actions  
 7.068–7.071  
 consolidation of claims/Art 6(1) 7.012,  
 7.042, 7.065  
 Dutch courts' application of Art 6(1)  
 7.052  
 English authorities on Art 6(1) 7.043  
 founding jurisdiction in tortious actions/  
 Art 5(3) 7.023–7.025  
 general jurisdiction/Art 2(1) 7.016–7.017  
 governing law: Regulation 44/2001  
 7.006–7.009  
*lis pendens see lis pendens*  
 litigation involving parties domiciled  
 outside EU 7.086–7.091  
 parties domiciled outside the EU and  
 Regulation 44/2001 7.013–7.015  
 Regulation 44/2001, Commission review  
 of 7.083–7–7.085  
 special jurisdiction: Art 5(3) and Art 6(1)  
 7.018–7.022  
 'undertaking', interpretation of EU law  
 concept of 7.045–7.049  
 EU harmonised rules 7.002, 7.008  
 national boundaries, litigation effects  
 cutting across 7.001  
 private litigants' access to probative documents  
 in EU cartel damages actions  
 4.004–4.070  
 Commission documents, access to *see*  
*under* documentary evidence, access  
 to  
 claims for damages, bringing 4.004  
 follow-on actions 4.004  
 existence of right to inspect evidence  
 dependent on national/EU law 4.005  
 procedural autonomy principle *see under*  
 Member States  
 profitability-based approach 8.071–8.073  
 increases/decreases in profits as indicator  
 for damages 8.071  
 measuring profitability 8.072–8.073  
 proving the infringement 4.001–4.109

- access to evidence/documents, importance of 4.003
- prior administrative decisions *see* evidential value of prior administrative decisions
- private litigants *see* private litigants' access to documents in EU cartel actions
- public authorities/public enforcement
- antitrust enforcement preserve of 0.04, 6.001
  - collective action as effective complement to public enforcement 6.002, 6.003
  - see also* collective action/redress
  - evidential value of decisions in actions by public authorities 4.074
  - expertise, recourse to *see* recourse to expertise of public authorities by national courts
  - public enforcement, meaning of 0.07
  - punitive damages *see* exemplary damages *under* damages, measure of
- quantification of damages *see* damages, quantification of
- 'rational apathy problem' 6.009
- recourse to expertise of public authorities by national courts 5.64–5.74
- EU law: consultation of the Commission 5.65
- national law: consultation of the NCA
- 5.66–5.74
  - France 5.69–5.71
  - Germany 5.68
  - other jurisdictions 5.72–5.74
  - UK 5.67
- specialist authorities, meaning of 5.64
- Regulation 44/2001
- Art 2(1)/general jurisdiction 7.016–7.017
  - Art 5(3)
    - application of *Bier/Shevill* jurisprudence 7.026–7.036
    - founding jurisdiction in tortious actions 7.023–7.025
    - special jurisdiction 7.018–7.022
    - torpedo litigation, as basis for 7.037–7.041
  - Art 6(1)/consolidation of claims 7.012, 7.042, 7.065
- Dutch courts' application of 7.052
  - English authorities on 7.043–7.044
  - special jurisdiction 7.018–7.022
- Art 27/*lis pendens* 7.054, 7.055–7.062, 7.063, 7.064
- connected but not identical actions 7.070–7.071
- Art 28/ *lis pendens* 7.012, 7.054, 7.063–7.065
- Commission proposal, and 7.077–7.080
  - connected but not identical actions 7.068–7.069
  - English authorities on 7.072–7.076
  - irreconcilability for purposes of Art 28(3) 7.066–7.067
- Commission review of 7.083–7.7.085
- parties domiciled outside the EU 7.013–7.015
- replacing Brussels Convention 7.006
- scope 7.008
- uniform rules of jurisdiction for defendants domiciled in Member States 7.007
- remoteness
- damage quantification 8.104–8.108
  - remoteness of claims 3.013
- restitutio in integrum* (actual loss/loss of profit) 5.11–5.12, 5.24, 5.34
- rights
- individual rights *see under* private enforcement
  - legal framework *see under* legal framework
- Rome I Regulation 7.004, 7.094
- Rome II Regulation 7.004
- Art 4/general rule 7.097–7.098, 7.123
  - Art 6(3)/competition-based litigation 7.099–7.101
  - Art 6(3)(a) 7.119–7.123
  - Art 6(3)(b), functioning of 7.102–7.111
  - Art 6(4) 7.101
  - legislation, adoption as 7.096
  - lex fori* approach, and 7.094–7.096
- Schwartz, Marius 3.010
- simulated comparator markets 8.067–8.068
- artificially constructed counterfactual model, as 8.067

- fundamental conceptual problems 8.068
- sincere cooperation principle *see* loyal/sincere cooperation principle
- Slovakia
  - collective action scheme absent 6.072
- Slovenia
  - collective action scheme absent 6.072
- Spain
  - basis of damages actions for breach of EU competition law 2.60–2.61
  - opt-out collective action system 6.017
- substantial and procedural issues
  - causation *see* causation
  - damages, measure of *see* damages, measure of
  - expertise, recourse to *see* recourse to expertise of public authorities by national courts
  - joint and several liability *see* joint and several liability
  - limitation periods *see* limitation periods
- Sweden
  - collective action 6.135–6.141
  - courts as ‘specialist authorities’ 5.64
- time series analysis 8.055–8.060
  - advantages and disadvantages 8.055
  - before-and-after method 8.055–8.057
  - caution required in focusing on prices after cartel ended 8.060
  - empirical example of before-and-after estimation 8.058
  - nature of method 8.055
- tortious nature of litigation for breach of EU competition law 2.62–2.68, 7.004
  - actions tortious rather than contractual 2.63, 2.64, 7.004
  - agreements in contravention of competition law void/nullity 2.65, 2.66
- tying 8.047
- ‘undertaking’ in EU law, interpretation of 7.045–7.049
- United Kingdom (England and Wales)
  - basis of damages actions for breach of EU competition law 2.19–2.21
  - causation 5.03–5.06
  - but-for test 5.03
  - standard of proof 5.05
- collective action 6.043, 6.073–6.109
  - BIS consultation (2012) 6.092, 6.098–6.105
  - BIS response (2013) 6.106–6.109
  - Competition Act (s 478) 6.084–6.091
  - DTI consultation (2006) 6.093–6.095
  - further policy developments 6.092–6.109
  - GLOs 6.081–6.083
  - integral to legal system 6.074
  - OFT recommendations (2007) 6.092, 6.096–6.097
  - representative actions 6.076–6.080
  - statutory provision 6.073
- Commission decisions/Art16 Regulation 1/2003 4.078
  - Crehan* judgment 4.082–4.085
  - deference 4.082–4.083
- competition law damages claims as tort of
  - breach of statutory duty 2.68, 2.69
  - strict liability 2.69, 2.70
- damages, exemplary 5.24–5.46
  - assessing 5.40
  - exceptional remedy 5.2
  - guiding principles 5.40–5.41
  - intentional or reckless breaches 5.38
  - ne bis in idem* principle 5.29–5.30
  - purpose/object 5.32, 5.39, 5.40
  - when awarded 5.25, 5.27, 5.29, 5.38, 5.43
- damages/presumption of loss 5.20
- disclosure of documents/*National Grid* 4.036, 4.037–4.056
  - balancing exercise 4.044–4.045, 4.048
  - disclosure and inspection of documents 4.039
  - documents held by third parties, access to 4.058
  - Evidence Regulation 4.050–4.056
  - French blocking statute 4.049–4.055
  - history of discovery 4.038
  - legitimate expectations 4.044
  - national leniency programmes 4.042–4.048
  - proportionality 4.045
  - withholding documents from inspection 4.040–4.048

- establishment of right to damages as  
 matter of EU law: *Crehan* 2.03–2.17  
 proceedings in the English courts  
 2.03–2.11
- indirect purchaser standing and passing-on  
 3.069–3.073  
 burden of proof 3.070  
 defence of passing-on 3.069–3.073  
 government consultation 3.071  
 OFT view 3.070
- joint and several liability 5.75  
 contribution 5.77
- jurisdiction 7.027–7.029  
 Art 6(1) Regulation 44/2001, authorities  
 on 7.043–7.044  
 Art 28 Regulation 44/2001, authorities  
 on 7.072–7.076
- knowledge  
 imputing knowledge of parent's conduct  
 to subsidiary 7.049  
 required on part of defendant to found  
 damages claim 7.049
- limitation periods 5.48, 5.50, 5.55–5.61  
 harmonising limitation periods  
 5.60–5.61  
 statutory basis for limitation periods 5.55
- NCA, consultation of 5.67
- NCA decisions, evidential value of  
 4.090–4.103  
 CAT decisions 4.091  
 damages actions following public  
 infringement decision 4.090–4.091  
 identity of parties on whom  
 administrative decisions binding  
 4.098–4.103  
 OFT decisions 4.091  
 scope of follow-on actions under  
 Competition Act 4.092–4.097
- teleological style of argumentation 2.07
- United States (US)  
 antitrust injury 2.08  
 concept of 3.090–3.091  
 class/collective action 6.157–6.173  
 Class Action Fairness Act (2005)  
 6.169–6.173
- common feature of antitrust enforcement  
 3.018, 6.007  
 effectiveness 6.007  
 Federal Rules of Civil Procedure (R 23)  
 6.158–6.168  
 indirect purchaser actions 3.111  
 opt-out system 6.020
- Commission's attempts to limit discovery  
 in US courts 4.061–4.070  
 importance of leniency programmes  
 recognised 4.067–4.069  
 reliance on comity 4.065–4.067, 4.070
- disclosure/discovery of documents 4.036  
 broad extent of discovery 4.062
- evidential value of decisions in actions by  
 public authorities 4.074
- foreign purchasers, damages actions in US  
 by 7.003
- indirect purchaser standing 0.04,  
 3.014–3.015, 3.028, 3.099–3.111  
 'co-conspirator' exception 3.107  
 'cost-plus' exception 3.107  
 'direct' and 'indirect' purchasers 3.036  
 direct purchasers, nature of 3.103–3.104  
 limitations in relation to indirect  
 purchaser actions 3.099–3.102  
 'ownership or control' exception 3.106  
 rule in *Illinois Brick* 3.099–3.104  
 rule in *Illinois Brick*, efficiency of  
 3.110–3.111  
 rule in *Illinois Brick*, exceptions to  
 3.105–3.109
- leniency programme 4.067  
 passing-on defence 0.04, 3.092–3.098  
 disallowed 3.092–3.096  
 private antitrust enforcement 0.04  
 Sherman Act 3.091  
 direct and substantial effect, conduct  
 having 7.112–7.113
- unjust enrichment  
 avoiding 3.025  
 passing-on defence, and 3.037,  
 3.044–3.052
- Van Gerven, Walter 1.15–1.16
- Werden, Gregory J. 3.010, 8,018