

Table of Contents

The Authors	3
List of Abbreviations	11
General Introduction	13
§1. GENERAL BACKGROUND OF THE COUNTRY	13
§2. THE ECONOMIC SYSTEM	16
§3. THE LEGAL SYSTEM	17
§4. HISTORICAL BACKGROUND OF ANTITRUST LAW	20
Part I. The Structure of Antitrust Law and Its Enforcement	23
Chapter 1. Sources of Antitrust Law	23
§1. NATIONAL SOURCES	23
§2. INTERNATIONAL SOURCES	24
§3. SECONDARY SOURCES	25
I. Regulations and Guidelines	25
§4. SOURCES' RELATION AND HIERARCHY	27
§5. ROLE AND AUTHORITY OF PRECEDENTS	27
Chapter 2. Scope of Application	29
§1. TERRITORIAL REACH	29
§2. SPECIAL SECTORS	29
I. Insurance Sector	30
II. Telecommunications and Broadcasting Sectors	31
	5

Table of Contents

III. Banking Sector	32
IV. Transport Sector	33
§3. STATE-OWNED ENTERPRISES AND PUBLIC UTILITIES	33
§4. SENSIBLE EFFECT AND <i>DE MINIMIS</i>	34
Chapter 3. Overview of Substantive Provisions	36
§1. RESTRICTIVE AGREEMENTS	36
§2. DOMINANT UNDERTAKINGS	38
§3. CONCENTRATIONS	41
§4. OTHER PROHIBITIONS	42
§5. TESTS OF ILLEGALITY	45
I. Per Se Prohibitions and Naked Restraints	45
II. Balancing Tests	46
III. Merger Tests	47
Chapter 4. Overview of Main Notions	48
§1. UNDERTAKING	48
§2. RELEVANT MARKET	50
§3. MARKET POWER/DOMINANT POSITION	54
§4. AGREEMENTS AND CONCERTED PRACTICES	57
I. Agreements between Undertakings	58
II. Concerted Practices	59
III. Decisions by Associations of Undertakings	62
§5. RESTRICTION OF COMPETITION	63
§6. MONOPOLIZATION AND ABUSE OF DOMINANCE	66
§7. CONCENTRATIONS	68
I. The Notion of Concentration	69
II. The Notion of Control	70
III. Dominance Test versus SIEC	73
IV. Joint Dominance	75
§8. JOINT VENTURES	77

Table of Contents

Chapter 5. Consequences of Violations and Enforcement Institutions	80
§1. ADMINISTRATIVE ENFORCEMENT	80
I. The Antitrust Authorities	80
A. Formation, Composition	80
B. Investigating Powers	82
1. Restrictive Agreements and Abuses of Dominant Position	82
2. Concentrations	83
3. General Sector Inquiries	83
C. Adjudicating Powers	84
D. Other Institutional Tasks	84
II. Government Direct Enforcement Activities	85
III. Other Administrative Agencies Applying Antitrust Rules	86
IV. Administrative Fines	87
V. Administrative Injunctions and Other Restrictive Orders	93
VI. Interim Measures	94
§2. CIVIL ENFORCEMENT	94
I. Competent Civil Courts	94
II. Sanctions	95
A. Nullity	95
B. Damages	96
1. The Class Action in the Italian System	103
C. Interim Measures	104
§3. CRIMINAL ENFORCEMENT	106
I. Criminal Sanctions for Antitrust Violation	106
II. Other Application of Criminal Law to Relevant Conducts	106
A. Applicability of Article 2638 of the Italian Civil Code to the Antitrust Authority's Instrumental Activity	108
B. The False Information Relevant for the Purposes of Paragraph 1 of Article 2638 of the Italian Civil Code	109
C. The Obstructing of the Antitrust Authority's Activity under Paragraph 2 of Article 2638 of the Italian Civil Code	111
D. Anti-competitive Behaviours in Breach of Law No. 287/90 and Common Offences Regulated by the Italian Criminal Code	112
III. Role of Prosecutors	114
IV. Competent Criminal Courts	115
Part II. The Application of the Prohibitions	117
Chapter 1. Restrictive Agreements	117
§1. HORIZONTAL AGREEMENTS	117
I. Cartels	118

Table of Contents

A. Price Fixing	119
1. Concerted Practices to Fix Prices	121
2. The Role of Industry Associations	123
3. Professional Tariffs	124
4. Consortia	125
B. Market/Client Allocation	126
C. Production/Innovation Limitation	127
D. Group Boycott	129
E. Collusion on Other Objects	130
1. Bid-Rigging	130
2. Agreements on Other Objects	132
II. Information Exchange Practices	132
III. Cooperation Agreements	135
A. Research and Development	136
B. Specialization	137
C. Standardization	138
D. Joint Production	138
E. Joint Purchasing	139
F. Joint Selling	140
§2. VERTICAL AGREEMENTS	141
I. Distribution	143
A. Exclusive Distributorship	143
B. Exclusive Dealing	145
C. Selective Distribution	145
D. Franchising	146
II. Technology Licensing	146
A. Patent Licensing	147
B. Trademark Licensing	147
C. Know-How and Trade Secret Licensing	147
Chapter 2. Dominant Undertakings' Prohibited Practices	148
§1. EXPLOITATIVE PRACTICES	148
I. Unfair (Excessive) Pricing	148
II. Discrimination	153
A. Exploitative versus Exclusionary Discrimination	153
B. Exploitative Discrimination	154
§2. EXCLUSIONARY PRACTICES	156
I. Predation	158
A. Notion and Requisites	158
B. The Measure of Cost	158
C. Predation and Cross Subsidies	160
D. Predation and Pricing below Cost under the Law of Unfair Competition	161
II. Tying	162

Table of Contents

III. Rebates	166
IV. Refusal to Deal	169
A. General	169
B. Essential Facilities	171
C. Refusal to Deal and Intellectual Property Rights	173
V. Price Squeeze	175
VI. Other Exclusionary Abuses	177
A. Exclusive Dealing and the English Clause	177
B. Market Pre-emption & Raising Rivals' Costs	179
Chapter 3. Concentrations	183
§1. HORIZONTAL MERGERS	183
I. The Banking and Insurance Sectors	187
II. The Air Transport Sector	200
III. Telecommunications Sector (TLC)	206
§2. VERTICAL MERGERS	207
§3. MARKET PRODUCT/EXTENSION MERGERS	214
§4. PURE CONGLOMERATE MERGERS	214
§5. JOINT VENTURES	218
Part III. Administrative Procedure	219
Chapter 1. Administrative Investigations before the Antitrust Authority	219
§1. INITIATIVE	219
I. General Sector Inquiries	219
II. Ex Officio Investigations and Complaints	222
§2. POWERS	223
I. Request for Information	223
II. Investigating and Search Powers	225
III. Cooperation with Other State Institutions	228
§3. RIGHT OF DEFENCE	229
I. Content and Notification of Opening Decisions	229
II. The Proceedings: Hearings, Access to Files, Briefs	230
III. Statement of Objections	233
IV. Final Hearing and Decision	234

Table of Contents

Chapter 2. Voluntary Notifications and Clearance Decisions	237
Chapter 3. Merger Control	244
§1. PRELIMINARY FILING OBLIGATIONS	244
I. Criteria and Thresholds	244
II. Turnover Calculation	246
III. Other Relevant Notions	247
§2. STRUCTURE OF PROCEEDINGS	250
I. Preliminary Assessment and Full Investigation	250
II. Time Framework	253
§3. CLEARANCE AND CONDITIONAL CLEARANCE	254
I. Conditions and Undertakings	254
A. Content	255
B. Timing	258
§4. RELATIONS WITH OTHER MERGER CONTROL AUTHORITY	258
I. Other Authorities within the Local Jurisdiction	258
II. International Coordination	260
Chapter 4. Challenging of the Administrative Decision	261
§1. COMPETENT COURTS	261
§2. TIME LIMITS	263
§3. SCOPE OF JUDICIAL REVIEW	264
Selected Bibliography	267
Index	269