

EXTENDED TABLE OF CONTENTS

<i>Foreword</i>	xi
<i>Acknowledgements</i>	xiii
<i>Table of cases</i>	xiv
<i>Table of legislation</i>	xxvii

1. INTRODUCTION	
A. WHY A BOOK ABOUT EVIDENCE, PROOF AND JUDICIAL REVIEW?	1.001
B. IS THERE A PROBLEM WITH JUDICIAL REVIEW?	1.007
C. FACT AND LAW: WHAT NEEDS TO BE PROVEN?	1.011
1. The boundaries between fact and law	1.011
2. The relevance for national courts	1.020
D. THE INTERACTION BETWEEN ADMINISTRATIVE AND JUDICIAL PROCEEDINGS	1.024
1. Standard of proof v standard of judicial review	1.024
2. On the legality of a system where decisions are adopted by the Commission first	1.029
E. THE ADMINISTRATIVE FACT-FINDING	1.033
2. BURDEN AND STANDARD OF PROOF	
A. INTRODUCTION	2.001
B. THE 'LEGAL' BURDEN OF PROOF	2.005
C. THE 'EVIDENTIAL' OR 'SUBJECTIVE' BURDEN OF PROOF	2.007
D. THE PRESUMPTION OF INNOCENCE	2.012
E. RELATIONSHIP WITH <i>ACTORI INCUMIT</i> , <i>PROBATIO</i> AND THE PRINCIPLE THAT JUDICIAL REVIEW WILL BE BASED ON SUBSTANTIATED SUBMISSIONS	2.015
F. STANDARD OF PROOF	2.018
1. Comparative elements	2.018
2. The evolution of the case law	2.022
3. The relevance of 'plausible alternative' narratives	2.032
G. VARIABLES THAT INFLUENCE THE 'PERSUASIVE EFFECT' OF THE EVIDENCE	2.038
1. Introduction	2.038
2. The perception of normality	2.041
3. Proving personal conduct versus proving consequences	2.044
4. The risks of getting it wrong	2.053
H. THE EVIDENTIAL BURDEN OF PROOF IN ACTION	2.065
1. Introduction	2.065
2. The use of 'presumptions'	2.069
3. Parallel conduct	2.079
4. When the body of evidence is strong enough to require a response by the opposing party	2.088
I. DISCRETION AND MARGIN OF ASSESSMENT	2.094
J. A HOLISTIC VIEW OF EVIDENCE: IT IS THE BODY OF EVIDENCE THAT MUST MEET THE STANDARD, NOT EACH PIECE OF EVIDENCE	2.102
3. EVIDENCE AND PROOF IN SPECIFIC AREAS: SINGLE AND CONTINUOUS INFRINGEMENT, DURATION, DEFENCES AND FINES	
A. THE SINGLE AND CONTINUOUS INFRINGEMENT	3.001
1. Introduction	3.001

EXTENDED TABLE OF CONTENTS

2.	One or more infringements?	3.010
3.	The scope of the individual liability of each undertaking	3.016
B.	LINKING EVIDENCE IN TIME: PROVING DURATION	3.022
1.	General principles	3.022
2.	Proving when the infringement starts	3.030
(a)	The criteria in general	3.030
(b)	As of when is an undertaking liable for participation in an on-going single infringement?	3.032
(c)	Abuses of dominant position	3.033
3.	Termination of the infringement as a whole	3.036
4.	Termination of the participation of individual undertakings	3.045
(a)	General criteria	3.045
(b)	A reduced form of participation is still participation	3.049
(c)	Examining effects or implementation	3.050
(d)	The role of taking public distance	3.051
5.	Interruptions	3.066
(a)	General criteria	3.066
(b)	Lack of evidence of content of contacts when there is a pattern of conduct	3.069
(c)	Lower intensity contacts or even disputes in the cartel will not interrupt the infringement	3.071
(d)	Taking into account implementation or effects	3.076
(e)	The length of the 'evidentiary gap'	3.078
(f)	A presumption of continuity?	3.083
(g)	Conclusion	3.084
C.	DEFENCES	3.086
1.	Objective necessity and ancillary restrictions in Article 101 TFEU	3.087
2.	Article 101(3) TFEU	3.093
(a)	Introduction	3.093
(b)	From <i>Grundig</i> to <i>Unilever</i>	3.095
(c)	The <i>GlaxoSmithKline</i> judgments	3.097
(d)	The case law after <i>GlaxoSmithKline</i>	3.105
(e)	The Article 101(3) TFEU Guidelines	3.107
3.	Objective and economic justifications in abuse cases	3.111
D.	FINES	3.116
1.	Introduction	3.116
2.	The value of sales and turnover	3.120
3.	The gravity of the offence	3.128
(a)	Proving the nature	3.128
(b)	Proving implementation or impact	3.130
4.	Aggravating circumstances	3.136
5.	Attenuating circumstances	3.139
6.	Other adjustments	3.148
4.	PROBATIVE VALUE OF THE DIFFERENT EVIDENTIARY MEANS	
A.	CATEGORIES OF EVIDENCE	4.001
1.	Inculpatory v exculpatory evidence	4.001
2.	Contemporaneous v ex post facto evidence	4.004
3.	Direct v indirect evidence	4.007
4.	Written v oral evidence	4.009
B.	ADMISSIBILITY OF THE EVIDENCE	4.011
C.	THE GENERAL CRITERIA: RELIABILITY	4.021
D.	CONTEMPORANEOUS DOCUMENTS	4.026
1.	Documents written in close temporal connection with the events have high probative value	4.026
2.	The evidence does not need to come from the undertaking accused	4.028
3.	Authorship, 'second hand' information, and documents which are unsigned or undated	4.032
4.	The degree of precision of the document	4.040
5.	Preparatory documents	4.042

E. INFORMATION DRAFTED <i>EX POST</i>	4.044
1. Introduction	4.044
2. The author (or the source) of the information	4.051
3. The consequence of providing false or incorrect information	4.055
4. The interests of the person providing the information	4.061
(a) Statements going against the interest of the person providing them are highly reliable	4.061
(b) Statements which tend to alleviate culpability (exculpatory statements) of those making it (or their employer) have limited probative value	4.073
(c) The interests of those providing the information in other cases	4.075
5. Depth, precision and consistency	4.079
6. Need for corroboration	4.083
(a) The documents that need corroboration	4.084
(b) The extent or degree of corroboration	4.086
(c) The means of corroboration	4.090
7. Other factors	4.092
(a) The lack of use of certain parts of the statement	4.092
(b) Evolution in the account of the facts	4.094
(c) Timing	4.098
8. Examination of witnesses during the administrative procedure	4.101
9. Economic studies	4.105
F. THE ATTITUDE OF THE UNDERTAKING DURING THE ADMINISTRATIVE PROCEEDINGS	4.125
5. PROCEDURE AND EVIDENCE IN COURT	
A. GENERAL OVERVIEW	5.001
B. PLEADING COMPETITION CASES: SOME SPECIFIC ISSUES	5.005
C. EVIDENCE IN COURT	5.012
1. Introduction	5.012
2. Adversarial proceedings and 'equality of arms'	5.015
3. The role of annexes to the pleadings	5.022
4. Timing of the submission of evidence	5.025
5. The role of the judge	5.028
(a) Types of measures that can be adopted	5.028
(b) Passive v active role and interaction with the burden of proof	5.033
(c) The Court's discretion when adopting measures of enquiry	5.036
6. The problem with leniency statements	5.037
D. ORAL TESTIMONY	5.039
1. Introduction	5.039
2. Distinguishing the formal hearing of witnesses from other evidentiary means	5.041
(a) Written witnesses statements	5.042
(b) Informal hearing of individuals	5.044
3. Is oral evidence secondary?	5.046
4. The fundamental rights dimension	5.051
(a) The case law of the Court of Justice	5.051
(b) The case law of the ECtHR	5.053
E. EXPERT REPORTS	5.059
1. Introduction	5.059
2. Neutral expert evidence	5.062
3. Partisan expert evidence	5.069
6. SCOPE OF JUDICIAL REVIEW	
A. INTRODUCTION	6.001
B. REVIEW OF THE FINDINGS ON CONSTITUENT ELEMENTS OF THE INFRINGEMENT	6.004
1. Introduction	6.004
2. The basis for the review: whether new pleas and evidence may be considered	6.008
(a) Raising new submissions and contesting previously uncontested issues	6.009
(b) Adducing new evidence not produced during the administrative procedure	6.013
3. The evolution of the standard of 'limited' review for 'complex economic assessments'	6.024

(a) The origins	6.024
(b) Article 101 TFEU	6.028
(c) Mergers	6.031
(d) Article 102 TFEU	6.035
(e) The test after <i>KME</i>	6.044
(f) Has the intensity of review increased?	6.046
(g) Review should be 'deep' but not 'too deep'?	6.049
4. The right to a fair trial	6.052
(a) The right to a fair trial in Strasbourg: 'full jurisdiction'	6.052
(b) The right to a fair trial in Luxembourg	6.056
5. The 'limited' review today	6.063
(a) The review is 'different' in nature, but not necessarily 'limited'	6.063
(b) What matters is what the court does, and not just semantics	6.069
(c) What is a 'manifest' error?	6.072
(d) Could 'complex economic assessments' be just a matter of law?	6.075
(e) The rationale for 'limited' review	6.085
6. Conclusions	6.093
C. THE REVIEW OF THE FINE: TYPES OF REVIEW	6.096
D. REVIEW OF LEGALITY OF THE AMOUNT OF THE FINE	6.100
E. THE RELATIONSHIP BETWEEN THE REVIEW OF LEGALITY OF THE FINE AND UNLIMITED JURISDICTION	6.109
1. Unlimited jurisdiction is not an autonomous action, but must be requested in the context of the action pursuant to Article 263 TFEU	6.109
2. Unlimited jurisdiction is not premised on a prior finding of illegality	6.110
3. The boundaries between legality review and unlimited jurisdiction are not always clear in practice	6.115
4. The relevance of the duty to state reasons	6.121
F. UNLIMITED JURISDICTION: NATURE AND LEGAL FRAMEWORK	6.124
1. The nature of unlimited jurisdiction	6.124
2. 'Unlimited jurisdiction' is not really unlimited: substantive limits	6.126
3. The procedural legal framework of unlimited jurisdiction	6.127
(a) The Court may take into account events after the decision	6.127
(b) Parties may raise new arguments not raised during the administrative procedure	6.128
(c) New evidence may be relied upon	6.129
(d) Whether a specific request to exercise unlimited jurisdiction is necessary	6.132
(e) Specific pleas or arguments must be raised, since the exercise of unlimited jurisdiction does not amount to a review of the Court's own motion	6.137
(f) The role of the <i>ne ultra petita</i> principle	6.145
(g) The parties must be heard	6.149
G. THE PRACTICE OF EU COURTS IN EXERCISING UNLIMITED JURISDICTION	6.151
1. Influence of the Commission's Fining Guidelines	6.151
2. In case of partial annulment of findings on the constituent elements of the infringement, the reduction may not correspond to that applying the Guidelines	6.163
3. When EU Courts refrain from exercising unlimited jurisdiction	6.165
4. EU Courts are reluctant to increase the fine	6.166
5. Leniency	6.173
H. THE OUTCOME: SOME SPECIFICITIES OF COMPETITION LITIGATION	6.175
1. On the possibility of partial annulment	6.175
2. Extending reductions of the fine to other applicants which did not raise the same plea or submission	6.180