



Economics and the Interpretation and Application of U.S. and E.U. Antitrust Law I-II

Richard S. Markovits

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Vol. I (1) operationalizes the specific-anticompetitive-intent and lessening-competition tests of illegality both U.S. and E.U. antitrust law promulgate and the distorting-competition and exploitative-abuse-of-a-dominant-position tests E.U. law promulgates, (2) distinguishes these tests from an economic-inefficiency test of illegality, (3) lists the antitrust licit and illicit categories of profits conduct can yield, (4) develops conceptual systems and theories for analyzing conduct's impact on price and quality-or-variety-increasing-investment competition, (5) demonstrates that definitions of both economic and antitrust markets are inevitably comprehensively arbitrary, (6) criticizes various market-definition protocols proposed by scholars or used by government officials, (7) explains why no market-oriented approach to measuring a firm's economic power or conduct's antitrust illegality can be acceptable, (8) analyzes the profitability of oligopolistic and predatory conduct of all kinds and criticizes various scholarly arguments about their profitability, (9) proposes protocols for determining whether illegal-oligopolistic or predatory conduct has taken place and criticizes various scholarly and official protocols for doing so, and (10) examines the U.S. and E.U. case-law on such conduct and the European Commission's positions on predatory conduct.

Vol. II uses non-market-oriented approaches to analyze (1) the determinants of whether horizontal mergers, conglomerate mergers, vertical mergers, vertical internal growth, the various surrogates for vertical integration, joint ventures, and other sorts of collaborative arrangements violate the specific-anticompetitive-intent or lessening-competition test of illegality--i.e., violate U.S. and E.U. antitrust law, correctly interpreted and applied, (2) the determinants of the competitive impact of a rule allowing all members of a set of product rivals to engage in any type of vertical conduct and the legal relevance of such a rule's competitive impact, (3) the U.S. and E.U. case-law on all the above categories of conduct, and (4) the positions that the U.S. DOJ, FTC, and European Commission have taken on the appropriate way to analyze the legality of each such category of conduct and on the circumstances in which exemplars of each such category of conduct will be illegal. Vol. II concludes by comparing U.S. and E.U. antitrust law both as written and as actually interpreted and applied.

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