FOREWORD	23
INTRODUCTION	27
COMPOSITION OF THE WORKING GROUPS	41
I ANTITRUST LAW IN TIMES OF ECONOMIC CRISIS	
Coordinated by José Rivas	
PART I: THE VIEWS OF THE GCLC	45
Section (I): Anticompetitive agreements in times of crisis	47
1. Crisis cartels and restructuring agreements	48
1.1. Brief Historical Perspective	49
1.2. Crisis Cartels Under EU Competition Law	52
(a) Are Crisis Cartels always 101(1) Restrictions?	52
(b) The Availability of an Article 101(3) Exemption	53
(i) Introduction: Structural Overcapacity	55
(ii) The Four Conditions for Application of Article 101(3) TFEU	57
1.3. National Precedents	65
(a) Ireland: BIDS	65
(b) Greek Fishing Farms	68
(c) Spanish Olive Oil Storage	69
(d) Dutch Shrimp	70
1.4. Procedural Issues: finding of inapplicability and informal	
guidance	71
2. Alternatives to Restructuring Agreements – Other Forms	
of Cooperation	74
2.1. Horizontal Cooperation: Specialisation agreements	74
2.2. Mergers	75

	Pages
2.3. State aid	
(a) French Mills	
(b) Dutch Beef (Weyl Beef)	
(c) Dutch Pork	78
(d) Conclusion	79
Section (II): Unilateral behaviour in times of crisis	80
1. Enforcement of competition rules on unilateral conduct	
in the EU – state of play	
1.1. EU Commission recent practice in the field of unila	
conduct	
1.2. NCAs' recent practice in the field of unilateral con-	
2. Competition enforcement and unilateral conduct - is the	
for a different approach?	
2.1. Unilateral conduct as opposed to State aid, anticor	_
agreements and anticompetitive mergers	
2.2. Unilateral conduct in times of crisis - Is there room for reviewing the assessment criteria?	
3. Shifting of enforcement priorities	
3.1. Grounds for non-intervention	
3.2. Competition law versus regulation	
3.3. Interplay between competition law and consumer p	
3.4. Grounds for Intervention	
(a) If there are high and non-transitory entry barriers	
in a dominant position	•
(b) The dominant position is due to current/past excl	
special rights or to previously unprosecuted exclu	isionary
anticompetitive practices	
(c) Lack of a sector-specific regulator with jurisdiction	on
to set prices	
4. Review of the enforcers' toolkit	
4.1. Non mandatory deadlines and transparency obligat	ions 103
4.2. Commitment decisions	
4.3. Interim measures	
5. Conclusions	
Section (III): Redefining EU antitrust fining policy in tim	es of crisis 111
1. The current fining practice and the downturn	
1.1. Recent fining practice	
(a) Inability to pay	
(b) Ability of the Commission to take into account	
the particularities of a given case	

	(c) Statutory fine cap
	(d) Payment modalities
1.	2. Conclusion
2. R	ethinking fining policy in times of crisis
2.	1. The objectives of a fining policy
	(a) Deterrence
	(b) Restitution
2.	2. Alternative tracks for a fining policy
	(a) Taking into account profits when calculating fines
	(b) Use of alternative sanctions
	(c) Reflection of damage compensation
3. C	onclusion
Section	(IV): Is a sector focus needed in a recession?
	ow to focus antitrust enforcement in times of crisis?
1.	1. Collusive behaviour
	(a) Impact of falling demand on collusion
	(b) Recommendations
1.	2. Exclusionary behaviour
	(a) Effects increasing the likelihood of exclusionary behaviour
	(b) Opposite effects
	(c) Recommendations
2. D	oes the financial crisis affect the current sector focus?
2.	1. Financial sector
	(a) LIBOR/EURIBOR
	(b) Credit Default Swaps
	(c) S&P / Reuters
	(d) Online payments (EPC)
	(e) Multilateral Interchange Fees
	(f) Recommendations
2.	2. Information and telecommunication technologies
2.	3. Pharmaceutical sector
2.	4. Energy
2.	5. Food and other basic industry sectors
3. C	onclusion
PART I	I: THE VIEWS OF THE EU ENFORCEMENT OFFICERS
	In the views of the Eo enfoncement officers
	troduction
4. IN	onon of crisis carters and the underlying economic problem

	PAGES
3. Assessment of industrial restructuring agreements under	
Article 101 TFEU	152
3.1. Article 101(1) TFEU	152
3.2. Article 101(3) TFEU	153
(a) Efficiency gains(b) Indispensability of the restrictions to attainment	154
of the efficiency gains	155
$\left(c\right)$ Consumers must receive a fair share of the resulting benefits .	156
4. Conclusion	158
PART III: THE VIEWS FROM THE USA	159
By Donald C. Klawiter	
1. The Incentive to Collude in an Economic Downturn	160
2. The U.S. Reaction to crisis cartels and suspending enforcement	164
3. Preserving and enhancing competition is – and always will be – the highest enforcement priority	166
the highest enforcement priority	100
PART IV: CONCLUSION	169
II MERGER CONTROL IN TIMES OF ECONOMIC CRISI	S
Coordinated by Robbert Snelders	
1. INTRODUCTION	175
By Robbert Snelders	
2. MERGER ENFORCEMENT CHALLENGES	
DURING ECONOMIC CRISIS	177
By Hans Zenger	
2.1. The Standard of Review in Merger Control	
in Times of Economic Crisis	177
(a) Antitrust Laxity as a Response to Economic Crises	177
(b) Case Study: Lloyds TSB v. HBOS (2008)	179
2.2. The Outcome of Review in Merger Control	
in Times of Economic Crisis	180
(a) The Impact of Economic Crises on Market Realities	180
(b) Case Study: Olympic v. Aegean Airlines (2011)	182
2.3. Dealing With Mergers in Declining Industries in Times of Economic Crisis	183

	PAGES
(a) The Interaction of Pre-Crisis Decline and Post-Crisis Mergers	183
(b) Case Study: <i>UPM/Myllykoski</i> and <i>Rhein Papier</i> (2011)	. 186
2.4. Final Remarks on Merger Control Challenges	. 187
3. MERGER DEFENCES IN TIMES OF CRISES	189
By Enrique González Díaz	
3.1. The Efficiency Defence	. 189
(a) Current Regulatory Framework and Commission Practice	. 189
(b) Efficiency Defences: Time for Taking Them More Seriously? .	. 193
3.2. Failing Firm Defence	. 197
(a) Status and Regulation of the FFD in EU Merger Control Law .	. 197
(b) A Need for an Alternative Framework?	. 199
3.3. Final Remarks on Merger Defences	. 203
4. NATIONAL MERGER ENFORCEMENT DURING THE CRISIS:	
MORE FLEXIBLE?	205
By Éric Barbier de La Serre	
4.1. A Few – Albeit Spectacular – Instances of Legislative	
and Political Intervention	. 205
(a) Legislative Intervention to Protect the Financial System	. 206
and Certain Sectors	
4.2. No Widespread Relaxing on the Substance	
(a) Failing Firm Defence: No Relaxing	. 211
Flexibility on the Substance	. 216
4.3. Remedies and Procedure: More Pragmatism	
(a) In Certain States: More Pragmatism on Remedies	
(b) In General: More Pragmatism on Procedural Matters	
4.4. Final Remarks on National Merger Enforcement	
5. CONCLUSION.	223
III STATE AID ENFORCEMENT IN THE FINANCIAL SE	CTOR
Coordinated by Jacques Derenne	
1. INTRODUCTION	229
By Jacques Derenne	220

	Pages
2. OVERVIEW - MANAGING THE FINANCIAL CRISIS	
IN EUROPE: THE ROLE OF EU STATE AID LAW ENFORCEMEN	T 231
By Damien Gerard	
2.1. Introduction	. 231
(a) The financial crisis as a market failure	. 232
(b) State aid as a remedy	. 233
2.2. State aid enforcement as a coordination tool	. 235
(a) Salvaging EU State aid rules to the benefit of certainty and stability	. 237
(b) Conditionality as the preeminent coordination tool	. 243
2.3. State aid enforcement as a regulatory fix	. 249
(a) Regulatory objectives underlying the crisis regime of State aid control	. 250
(b) Regulatory choices: tensions in the crisis regime	
of State aid control	. 251
2.4. Beyond the crisis and beyond State aid enforcement	. 255
(a) Managing the crisis beyond State aid enforcement	. 256
(b) State aid enforcement beyond the crisis	. 258
3. SUBSTANTIVE COMPETITION ISSUES	. 261
3.1. The notion of aid in the financial crisis	. 261
By Hans Gilliams	
(a) "Advantage" - The "Market Economy Investor Principle" test .	. 261
(i) Absence of a "market"	. 262
(ii) Too big and too hurried to be private	. 263
(iii) Action in the public interest	. 264
(iv) Significant private concomitant participation	. 264
(v) Use of the private investor test for measuring	
the amount/intensity of aid	. 265
(b) Advantage resulting from modification of terms of previously granted aid	
(c) Beneficiary of aid measures	
(i) Nationalisation of banks and sale of viable activities	
(ii) No aid to purchaser of viable activities sold	00
by "bad bank"	. 273
(iii) Aid for orderly liquidation	
(iv) Squeeze-out payments to minority shareholders	
of nationalised banks	. 274
(d) Extension of deposit guarantee schemes	

PAGES

	(i) Extension of a deposit guarantee scheme	97
	not a "selective" measure	27 27
	(e) Imputability to the State of liquidity lines granted by national central banks and implication of State resources	27
3.2	Compatibility assessment	28
0.2.	By Andreas von Bonin and Ulrich Soltész	20
	(a) Return to long-term viability as the primary goal of banking	
	restructuring	28
	(i) The Banking Restructuring Communication of 23 July 2009	28
	(ii) Restoring long-term viability is paramount to burden	28
	sharing and compensatory measures	
	viability watchdog for banks	28
	(b) The assessment of long term viability by DG COMP in practice	28
	(i) Relevant factors (appropriate return on capital,	
	compete in the market place for capital, level of risk, access to funding)	28
	(ii) Application to individual business activities	28
	(iii) Consequences for the business model and the	20
	restructuring plan to be submitted	28
	(iv) Remuneration of State aid measures and claw-back	20
	obligations as a threat to viability	28
	(v) The flipside: Winding-up of banks where return	
	to viability is not credible	28
	(c) Own contribution – burden sharing	29
	(i) The Banking Restructuring Communication	
	of 23 July 2009	29
	(ii) The assessment in the case practice	29
	(d) Compensatory measures (type, implementation)	29
	(i) Background and legal basis	29
	(ii) Divestments and reduction of the balance sheet	29
	(iii) Behavioural commitments	29
	(iv) A new role for DG COMP: reshaping the European	
	banking sector?	29
	EDURE ISSUES	30
4.1.	"Firm on the principles - Flexible on procedure"	30
	By Andreas von Bonin	
	(a) Rescue measures	30

	(i	i) Approval by individual decisions
	(i	ii) Approval under a scheme
	(i	iii) Approval as emergency decisions
	(b) R	estructuring measures
	(i	i) The development of DG COMP's policy on the need
		to submit a restructuring plan
	(1	ii) Continued validity of rescue aid decisions during
		the assessment of the restructuring plan vs. provisional
		approval (under Annex 5 of the Impaired Asset
	(a) O	Communication)
		pening of in-depth investigations v. fast track: cocedural differences
		i) Commitments v. conditions and obligations
		ii) Involvement of third parties
		cructuring and duration of procedures: portfolio evaluation,
	` '	ability assessment
		ne ECB as the central European banking supervisor
4.2.		al review (States, beneficiary & third parties)
		RANCOIS-CHARLES LAPRÉVOTE
	(a) O	verview of Judicial review so far
	(b) A	dmissibility
		nallengeable measures
	(i	i) Commission individual decisions
	(i	ii) Failure to act?
		iii) Monitoring and other decisions?
	-	cope of judicial review
		i) Existence of aid
	(i	ii) Compatibility/Commitments
		iii) Procedural rights
	(e) Co	onsequences of judicial review
		i) Full or partial annulment
	(i	ii) Interim measures
	(f) Po	ossible damages actions
	(i	i) Disclosure of sensitive information/ non-confidential
		versions of decisions
	(i	ii) Substance of decisions
	(g) Ju	idicial review at the national level
	(i	i) Role of national courts in case of alleged violation
		of Article 108 standstill obligation
	(1	ii) Possibility to request opinion/ preliminary ruling
		to Commission/ECJ (not used so far)

	PAGES
4.3. Future procedural challenges (and additional commitments	
policy)	327
By Ulrich Soltész and Andreas von Bonin	
(a) Monitoring and reopening of proceedings	
(e.g. in case of new aid)	327
(b) Modification and abuse decisions	329
(c) Conclusion	331
4.4. Procedural specificities in the financial sector	331
By Andreas von Bonin	
(a) Structural v . non-structural measures at rescue stage	331
(b) In-depth assessment of business models and portfolios	331
(c) Long-term monitoring	332
5. ECONOMIC ISSUES	333
5.1. Economic characteristics of the State aid enforcement	999
in the financial sector and lessons from the financial crisis	333
By James Kavanagh and Lorenzo Coppi	555
(a) General remarks	333
(i) The three peculiarities, from an economics perspective,	999
of Article 107(3)(b) aid to the financial sector	334
(ii) The bigger picture: the relationship between State aid	001
control and financial stability	338
(iii) Other important considerations: Interaction between	000
state aid policy, competition policy and regulation	341
(b) Economic lessons for State aid policy	341
(i) Good aid versus bad aid	341
(ii) Counterfactual analysis	344
(iii) The measurement of aid to the financial sector	345
5.2. Social cost	350
By Edurne Navarro Varona and Luis Moscoso	
(a) Social cost of restructuring: limits and adequate	
control by the Commission.	350
(b) Participation of workforce representatives in State aid	
proceedings before the European Commission	352
(c) Other issues	353
C INTERNAL MARKET AND COMPETITION ICCURS	
6. INTERNAL MARKET AND COMPETITION ISSUES:	
INTERACTION BETWEEN NEW FINANCIAL REGULATORY MEASURES AND STATE AID IN THE FINANCIAL CRISIS	255
	355
By Leonardo Armati and François-Charles Laprévote	
6.1. The pre-crisis and crisis situation: fragmented regulatory	
landscape versus exclusive competence of the Commission	055
on State aid clearance.	355

	PAGES
6.2. Towards a more harmonized regulatory and supervision landscape: EU initiatives and potential impact	
on State aid control.	357
(a) The Commission proposal for a "banking union"	358
(b) Interaction with State aid policy	360 361
 (i) Recapitalisation / funding recommendations	362
6.3. Addressing the sovereign issue - European Stabilisation	
Actions since May 2010 and interactions with State aid	366
(a) The "feedback loop" between the banking and the sovereign	
crisis and its impact on state aid control	366
(b) EU and euro-area actions in the sovereign crisis	368
(c) Possible interaction with State aid process and questions:	371
7. CONCLUSION	375
STATE AID POLICY IN THE REAL ECONOMY IN TIMES OF ECONOMIC CRISIS COORDINATED BY MASSIMO MEROLA	
1. INTRODUCTION	381
2. RELATIONSHIP BETWEEN STATE AID RULES	
AND COMPETITIVENESS	385
By Bernard van de Walle de Ghelcke and Simon Pilsbury	
2.1. Introduction	385
2.2. The Europe 2020 Strategy and the European Union industrial policy initiatives to enhance competitiveness: the interface	
with competition policy	387
and competitiveness	388
(a) The basic objectives of the State aid rules and limitations	000
deriving thereof	388
(b) Relevant areas of the State aid rules	390
(i) Assessment criteria	390
(ii) New or revised instruments	392
(iii) State aid rules supporting other Europe 2020 initiatives .	393

	PAGES
2.4. The EU State Aid Modernisation	393
2.5. Link with common commercial policy,	
trade rules and reciprocity	396
3. TEMPORARY FRAMEWORK: STATE AID TO THE REAL	
ECONOMY	399
By Marc Pittie and Guillaume Fabre	
3.1. Introduction: Context of the Temporary Framework	399
3.2. Description of the Real Economy Temporary Framework:	
a (temporary) step towards greater flexibility in State aid law?	401
(a) The 500 K Measure	402
(b) State guarantees	404
(c) Other measures: loans and simplification measures	40
3.3. Assessing the impact and phasing out of the Real Economy Temporary Framework	400
(a) The relative success of the Real Economy	400
Temporary Framework	406
(b) Phasing out of the Real Economy	
Temporary Framework in 2011	408
(c) Over too soon?	410
(i) The impact of the banking sector regulatory	
framework	410
(ii) The absence of an appropriate instrument to assess the compatibility of State aid to the real economy	412
the compatibility of State and to the real economy	412
4. PUBLIC INTERVENTION IN THE ECONOMY IN TIMES	
OF CRISIS	41
By José Luis Buendía Sierra, María Muñoz de Juan	
and Matthijs Visser	
4.1. Introduction	415
4.2. The MEIP and private creditor principle in traditional	
EU practice and case law	410
4.3. Has something changed because of the economic crisis? 4.4. Some final remarks	418 420
4.4. Some final remarks	420
5. STATE GUARANTEES IN TIMES OF CRISIS	429
By Isabel Taylor and Luisa Affuso	
5.1. Introduction	429
5.2. Comparison of "normal rules" <i>versus</i> "exceptional policy response"	429
•	429
(a) Background and basic principles	42

	P
(i) Notice on Guarantees	
(ii) R&R Guidelines	
(iii) Temporary Framework	
(b) Scope (type of guarantees and beneficiaries)	
(c) Economic rationale	
(d) Conditions under which guarantees can be granted	
5.3. Overview and analysis of Commission practice	
(a) Commission practice under the Temporary Framework \dots	
(b) Commission practice regarding guarantees	
outside the Temporary Framework	
5.4. Conclusions / Lessons for the future	
(a) Temporary Framework as a long-term tool	
(b) Temporary Framework as a short-term tool	
6. RECOVERY OF UNLAWFUL STATE AIDS, ESPECIALLY	
IN CASES OF INSOLVENCY: STATUS QUO AMIDST FINANCIAL	
CRISIS?	
By Gianni Lo Schiavo	
6.1. Introduction	
6.2. Overview of the rules for recovering unlawful aid	
(a) Legislation	
(b) Case law	
(i) Identification of the "beneficiary"	
(ii) The objective of recovery	
(iii) Recovery in cases of insolvency	
(iv) Recovery in cases of transfer of assets or transfer	
of shares	
(v) The "Absolute Impossibility" defence	
6.3. The effects of the financial crisis on the recovery of unlawful	
aids	
(a) Commission practice	
(b) Case law	
6.4. The recovery of unlawful state aid and the financial crisis:	
a substantial status quo	
(a) Alternatives to recovery	
(b) Recovery in cases of insolvency	
(c) From the "absolute impossibility" to a "financial difficulty"	
defence?	
(d) "Economic continuity" in insolvency cases	
6.5. Conclusion	

7. RESCUE AND RESTRUCTURING GUIDELINES –	
PRELIMINARY THOUGHTS	
By Eric Morgan de Rivery and Barbara Veronese	
7.1. Is there a need to refine the definition of a firm in difficulty $?.$.	
(a) Factual current definition and insights from guidelines	
(b) Is this definition too broad or too narrow in times	
of economic crisis - based on the experience gained	
during the crisis?	
(i) Option 1: keeping the definition as it is	
(ii) Option 2: broadening the definition	
(iii) Option 3: narrowing the definition	
(c) Assessment	
7.2. Should the distinction between rescue and restructuring aid	
be maintained?	
(a) The distinction got blurred over time	
causes, in spite of sound fundamentals	
(c) A renewed criterion: long-term viability of the undertaking	
(d) Long-term viability and the private investor principle	
8. COMPENSATORY MEASURES IN RESTRUCTURING AID CASES DURING THE FINANCIAL CRISIS	
By Alix Müller-Rappard and Matthijs Visser	
8.1. Introduction	
8.2. The Commission's use of its power to impose compensatory measures under the Guidelines - before the crisis	
8.3. Analysis of the Commission's practice under the financial crisis - Lessons learnt	
(a) No change in the Commission's policy in the real economy	
(b) Lessons learnt in particular with regard to compensatory	
measures imposed in the financial sector	
9. OWN CONTRIBUTION UNDER THE NEW R&R GUIDELINES .	
By Isabel Taylor and Luisa Affuso	
9.1. Introduction and background	
9.2. Overview of the requirements	
(a) Own contribution requirement under the R&R Guidelines \ldots	
(b) Own contribution / "burden sharing" requirements	
under the financial crisis rules	
9.3. Analysis of Commission practice	

(a) Commission practice regarding own contribution	
under R&R Guidelines	
(b) Commission practice regarding own contribution/	
burden sharing in banking cases	
9.4. Conclusion: should the own contribution threshold	
requirements in the R&R Guidelines be abandoned?	
10. THE PROBLEM OF DISTORTION OF COMPETITION	
By Philipp Werner and Matthijs Visser	
10.1. Introduction	
10.2. The assessment of distortions of competition	
prior to the crisis	
10.3. Commission practice during the crisis	
(a) Definition of the size of the firm in difficulty	
(b) Firm in difficulty located in assisted areas	
(c) Commitment not to grant further aid following	
the restructuring process	
(d) Comparison to aid granted to financial institutions	
10.4. Comparison and recommendations	
11. THE BALANCING TEST IN THE CONTEXT	
OF THE R&R GUIDELINES	
By Thomas Jestaedt	
11.1. Treaty provisions and Current R&R Guidelines	
11.2. Standard Economic Balancing Test of the Commission	
11.3. Non-applicability of Standard Economic balancing Test	
under the Current guidelines	
11.4. Balancing of effects in the European Commission Practice	
(a) Decisions applying R&R Guidelines	
(b) Examples of balancing test in non R & R cases	
11.5. Desirability of introducing a general "balancing test"	
in R&R Guidelines	
(a) Application of a full balancing test	
(b) Improving the economic underpinnings of the requirement	
of compensatory measures	
12. THE "ONE TIME, LAST TIME" PRINCIPLE IN TIMES	
OF CRISIS	
By Massimo Merola, Luigi Cappelletti and Barbara Veronese	
12.1. Introduction	

	PAGES
12.2. The "one time, last time" requirement prior to the crisis	518
(a) The normative background	518
(i) The R&R Guidelines of 1994 and 1999	518
(ii) The current rules: the R&R Guidelines of 2004	520
(iii) The Deggendorf doctrine	521
(b) The Commission's practice prior to the crisis	522
12.3. The "one time, last time" principle during the crisis	524
(a) The temporary rules in response to the crisis	524
(b) The Commission's practice in the context of the crisis	526
12.4. What is the future for the "one time, last time" principle	
in the revised R&R Guidelines for non-financial institutions?	529
13. CONCLUSION.	533
v	
THE NEXUS BETWEEN COMPETITION, INDUSTRIA AND TRADE POLICIES	L
Coordinated by Jacques Bourgeois and Nicoleta Tuominen	
PART I: INTRODUCTION	539
By Jacques Bourgeois and Nicoleta Tuominen	
1. The policy side	539
2. The legal side	549
2.1. The EU treaties	550
2.2. The EU courts	553
PART II: INDUSTRIAL POLICY AND COMPETITION	
ENFORCEMENT: IS THERE, COULD THERE AND SHOULD	
THERE BE A NEXUS?	555
By Nicolas Petit and Norman Neyrinck	555
Introduction	555
1. Definitional Issues.	557
1.1. Targeted Industrial Policies	557 557
1.2. Competitiveness Policies	559
1.3. Synthesis	561
2. Positivist (or Legalistic) Analysis	562
2.1. Competition and Industrial Policy in the EU Treaties	562
2.2. Article 101 and 102 TFEU	564
4.4. much 101 and 104 if EU	004

		PAGES
	(a) Industrial Policy as a Theory of Harm	564
	(b) Industrial Policy as a Justification	565
	(i) Article 101 TFEU	566
	(ii) Article 102 TFEU	569
	2.3. Merger Control	571
	(a) Industrial Policy as a Theory of Harm	571
	(b) Industrial Policy as a Justification	572
	(c) Member States?	574
	2.4. State Aid Law	574
	(a) State Aid Law and the Quasi Per Se Legality	
	of "Competitiveness" Subsidies	574
	(b) State Aid Law and the Rule of Reason Approach	
0	to "Targeted Industrial" Aid	575
3.	Empirical perspective	577
	3.1. Article 101 and 102 TFEU	577
	(a) Article 101 TFEU	577
	3.2. Article 102 TFEU.	578
	(a) "Targeted industrial policy" under Article 102 TFEU?	578 579
	(b) "Competitiveness Policy" under Article 102 TFEU?	581
	· ·	581
	(a) Targeted Industrial Policy under the EUMR?	981
	under the EUMR?	584
	3.4. State Aid.	586
4	Policy Perspective	587
	4.1. Overview of the Economic Literature	587
	(a) Pros and Cons of Targeted Industrial Policies	587
	(i) Pros	587
	(ii) Cons	590
	(b) Pros and cons of "competitiveness" policies	591
	(i) Pros	591
	(ii) Cons	593
	(c) Conclusion	594
	4.2. The Policy Perspective	594
	4.3. Prospective Perspective	596
	(a) Purpose of this Section	596
	(i) Possible Adjustments to Enforcement Activities	597
	(ii) Adjustments to the Law?	605
5.	Conclusions	605

. What are EU trade defence investigations really about?
~ · · · · · · · · · · · · · · · · · · ·
1.1. Trade defence is not about restoring competition
~ · · · · · · · · · · · · · · · · · · ·
1.2. A small sacrifice of welfare in order to protect manufacturin industries and employment in the EU
1.3. Trade defence was a small evil necessary to make trade
liberalisation possible in the first place
1.4. The core of the matter: the impact of trade defence
on competition
2. How trade defence investigations work
(a) Dumping
(a) Dumping
(c) Causal link
(d) EU interest
2.2. Anti-subsidy investigations
(a) A subsidy
(b) That is specific
2.3. The trade defence measures imposed
2.4. Initiation of trade defence investigations
2.5. The gathering of data in trade defence investigations and
decision making process
2.6. Safeguard investigations
3. Instances where competition arguments have been made in trade
defence investigations
3.1. Price fixing arrangement in the upstream industry: distortion of costs having an impact on the injury and causality
assessments
3.2. Refusal to supply as self-inflicted injury
3.3. Abusive use of trade defence by dominant undertakings
3.4. Limited number of players having an impact on the duty level
and the rejection of an undertaking
3.5. Existence of a cartel between some of the complaining EU producers
3.6. Tentative conclusion
I. Issues identified and recommendations

	PAGES
PART IV: EUR O-PREFERENCE IN EU TRADE AND COMPETITION LAW	639
PART IV: CONCLUSION	643
INDEX	647