# Table of Contents

## INTRODUCTION

### CHAPTER I – ANTITRUST LAWS IN THE INTERNATIONAL ENVIRONMENT

1. Public laws and their application

2. Several facets of state’s jurisdiction
   - 2.1. Jurisdiction to prescribe
     - 2.1.1. Territoriality as a basis of legislative jurisdiction
     - 2.1.2. Nationality as a basis of legislative jurisdiction
     - 2.1.3. Other bases of legislative jurisdiction
   - 2.2. Jurisdiction to adjudicate and jurisdiction for recognition and enforcement
   - 2.3. Limits of the jurisdiction to prescribe
   - 2.4. ‘Effects doctrine’
   - 2.5. Economic aspects of the prescriptive jurisdiction and the ‘effects doctrine’ in particular
     - 2.5.1. Economics aspects of the jurisdiction to prescribe
     - 2.5.2. Economic justification of the ‘effects doctrine’

3. Private international aspects of antitrust legislation
   - 3.1. Public laws and the conflict of laws
   - 3.2. Antitrust laws in the private international law
     - 3.2.1. Unilateral and bilateral conflict-of-law provisions
     - 3.2.2. Foreign antitrust law
     - 3.2.2.(a) Antitrust laws as part of the *lex causae*
     - 3.2.2.(b) Antitrust laws of the third countries
   - 3.2.3. ‘Inverse unilateral’ and bilateral conflict rules
   - 3.3. Unilateral reality in the matters of antitrust and the problems such unilaterality poses

4. The methods of dealing with international antitrust problems
CHAPTER II - PRESENT CONFLICT-OF-LAWS SOLUTIONS IN THE EXTRATERRITORIAL APPLICATION OF DOMESTIC ANTITRUST LAWS

1. The development of the American approach to extraterritoriality in the matters of antitrust

1.1. The structure of the US Antitrust Laws

1.1.1. Sherman Act

1.1.2. Other antitrust legislation

1.2. Territoriality presumption before the courts of the United States in the XIX century

1.3. Early antitrust cases

1.4. From American Banana to Alcoa - reign of territoriality

1.4.1. American Banana

1.4.2. ‘Vested rights’ theory and the American Banana

1.4.3. Aftermath of the American Banana

1.5. ALCOA case

1.6. Cases following ALCOA - focus on ‘conflicts’ with other nations

1.7. ‘Balancing’ approach - Timberlane and Mannington Mills

1.7.1. Timberlane

1.7.2. Mannington Mills - more of the same

1.7.3. Timberlane in the light of Mannington Mills and the following case practice

1.8. Third Restatement and 'reasonableness'

1.9. Testing the Restatement principles: Hartford Fire Insurance Case

1.10. Towards more sophisticated conflict of laws rules: recent case law

1.11. Extraterritorial reach of other US antitrust statutes

1.11.1. Merger control under the Clayton Act

1.11.1.(a) Merger between an US firm and a foreign firm

1.11.1.(b) Two foreign firms merging

1.11.2. Other areas covered by the Clayton Act

1.11.3. FTAIA Act

1.11.4. Shipping
## Table of Contents

1.11.5. Aviation 96  
1.11.6. Webb-Pomerene Act and the export cartels 97  

2. The extraterritorial reach of the European Communities antitrust legislation 99  
2.1. Structure of the EC Competition Laws 101  
2.2. The beginning - the competition provisions of the ECSC Treaty 102  
2.3. The jurisdictional scope of the EEC competition provisions and their interaction 103  
2.3.1. The exclusion of foreign trade 103  
2.3.2. - Primary and secondary competition legislation - the possible variations on the scope of their spatial application 103  
2.4. Extraterritorial reach of the articles 85 and 86 of the EEC Treaty 104  
2.5. The cases in the early 70's 105  
2.6. The Dyestuffs case 106  
2.6.1. ICI appeal 107  
2.6.2. Commission’s arguments 108  
2.6.3. ECJ holding 109  
2.7. The Woodpulp case 110  
2.7.1. The arguments of the appellants 111  
2.7.2. The arguments of the Commission 111  
2.7.3. The arguments of the Advocate General Darmon 112  
2.7.4. ECJ position 113  
2.7.5. Consequences and interpretations of the Woodpulp 114  
2.8. "Quasi-effects doctrine" or "pseudoterritoriality"? 115  
2.9. The role of comity in the EC competition practice 117  
2.10. European export cartels 118  
2.11. EC regulation of the international mergers 119  
2.11.1. Substantive merger law 119  
2.11.2. Case law under Merger Regulation 121  
2.11.3. Boeing/McDonnell Douglas merger case 122  
2.12. Endorsement of the ‘implementation’ approach in some national competition systems 124
3. German law and the ‘effects doctrine’ 126
   3.1. Historical background 126
   3.2. Pure 'effects doctrine'? - *Auswirkungsprinzip* of Article 98(2) GWB 127
   3.3. Narrowing 98(2) scope - the 'protective purpose' interpretation 129
      3.3.1. 'Protective purpose' as the decisive factor 129
      3.3.2. Vertical agreements 130
      3.3.3. Protective purpose confirmed - Olfeldrohre case (Oilfield pipes) 131
      3.3.4. Export cartels 133
   3.4. Control over the mergers with international dimension 134
      3.4.1. Merger provisions of the GWB 134
      3.4.2. Scope of application of the Section 23 - 'Organische Pigmenten' case 136
      3.4.3. Scope of application of section 24 - substantive merger provisions 138
      3.4.3.(a) Synthetic Rubber (Bayer/Firestone) case - conflict-of-laws approach 138
      3.4.3.(b) Partial prohibition - Philip Morris-Rothmans case 139

4. French antitrust laws and extraterritoriality 141
   4.1. Historical development 141
   4.2. No written conflict-of-laws rules 142
      4.2.1. Old rules 143
      4.2.2. New meaning of the old rules 144

5. British defiance of the effects doctrine 145
   5.1. Anti-cartel law 146
   5.2. Monopolies and mergers 147
      5.2.1. Monopolies 147
      5.2.2. Mergers 149
      5.2.3. Other statutes 149
   5.3. Overview of the British position 150
   5.4. Commonwealth following of the British approach 152
      5.4.1. India 152
      5.4.2. Australia 153
      5.4.3. New Zealand 154
# Table of Contents

6. **Japanese solution of ‘indirect extraterritoriality’** 156
   6.1. Section 6(1) of the Antimonopoly Act and its implications 156
   6.2. Judicial and administrative practice 157
   6.3. ‘Indirectness’ and its feasibility 159

7. **Central and Eastern Europe** 160
   7.1. Common history and similar problems 161
   7.2. Introduction of the antimonopoly laws 161
   7.3. Territorial scope of the new laws 162
      7.3.1. Ommittance of the conflict-of-laws rules 162
      7.3.2. Inclusion of the conflict rules 164
         7.3.2.(a) Russia 164
         7.3.2.(b) Czech Republic and Slovakia 165
         7.3.2.(c) Poland 166
         7.3.2.(d) Yugoslavia 167
         7.3.2.(e) Slovenia 169
         7.3.2.(f) Romania 170
         7.3.2.(g) Bulgaria 171
         7.3.2.(h) Hungary 172
         7.3.2.(i) Moldova 172
   7.4. Expansion of the EC competition law eastwards 174

8. **Summarised overview of the national antitrust laws** 176

**CHAPTER III - PROCEDURAL EFFECTS OF THE CROSS-BORDER APPLICATION OF ANTITRUST LAWS** 179

1. **Procedural confrontation** 180
   1.1. American practice 180
      1.1.1. American ‘needs’ 181
      1.1.2. Hague Evidence Convention and national systems of judicial assistance 182
      1.1.3. Uranium cartel case 184
      1.1.4. Aftermath - limits of cross-border American discovery in the matters of antitrust 188
   1.2. Alternative discovery practices 188
1.3. Crescendo of the 'Justizkonflikt' - the 'blocking Statutes'

2. Procedural co-operation
   2.1. Bilateral agreements
      2.1.1. US - EC co-operation
      2.1.2. Benefits and shortcomings of the bilateral agreements
   2.2. Multilateral approach to international antitrust procedural problems
      2.2.1. Existing multilateral frameworks
      2.2.2. Possible alternative multilateral solutions

3. Another aspect of co-operation - recognition and enforcement of foreign antitrust decisions
   3.1. ‘Private’ character of the decision
      3.1.1. Enacting authority and the character of the proceedings as an indication
      3.1.2. The nature of the claim as an indication
   3.2. Valid judicial jurisdiction of the enacting court
   3.3. Final resort - public policy
   3.4. Any chance of recognising and enforcing antitrust decisions abroad?

CHAPTER IV - CONCLUSIONS

Table of Cases

Notes

Bibliography