Index

ACQUISITIONS

Clayton Act, Section 7 and 8, generally, **§ 6:1 et seq.**

Defenses, § 6:9

Horizontal mergers and acquisitions, §§ 6:3 to 6:5

Pre-merger filing requirements, § 6:2

Vertical and conglomerate mergers and acquisitions, §§ 6:6 to 6:8

ACT OF STATE DOCTRINE

Foreign commerce, exemptions and immunities, § 8:10

ACTUAL MONOPOLIZATION

Elements of offense, §§ 3:2 to 3:5
Essential facilities doctrine, § 3:12
Market definition, § 3:4
Monopolizing conduct, § 3:5
Monopoly leveraging, § 3:11
Monopoly power, § 3:4
Predatory pricing, § 3:13
Statutory language, Sherman Act,
Section 2, § 3:1

AFTERMARKETS

See Market Power (this index)

AGENCY GUIDELINES

See Collaborations Guidelines; Intellectual Property Licensing Guidelines; Standards-Essential Patents Remedies Statement (this index)

AGENCY SAFE HARBORS

Collaborations guides and, §§ 2:13, 2:22

AGENCY SAFE HARBORS

—Cont'd

Intellectual property licensing guides and, §§ 2:13, 2:22

AGGREGATE EFFECTS ANALYSIS

Market power and, § 2:10 Rule of reason and, § 2:10

AGRICULTURAL COOPERATIVES EXEMPTION

Generally, § 8:4

ANCILLARY RESTRAINTS ANALYSIS

Agency guidelines, §§ 2:11, 2:13, 2:22

Horizontal market allocations and, § 2:13

Horizontal price fixing and, § 2:11 Joint ventures and, § 2:22

Naked restraints distinguished, §§ 2:11, 2:13, 2:16, 2:22

Other integrative activities, § 2:22

ANTITRUST INJURY

Confusion between standing and merits concepts of, § 9:6

Equal involvement defense and, § 9:6

Market injury and, §§ 2:10, 9:6 Standing and, § 9:6

ARBITRATION AGREEMENTS

Antitrust claims and, § 9:25 Class action waivers and, § 9:22

ARTICLE III

Standing and, § 9:7

ARTICULATION OF STATE POLICY

State Action immunity, § 8:7

ATTEMPTED MONOPOLIZATION

Elements of offense, § 3:6
Essential facilities doctrine and,
§ 3:12

Market definition, §§ 3:4, 3:6 Monopoly leveraging and, § 3:11 Predatory pricing and, § 3:13 Sherman Act, Section 2, statutory language, § 3:1

ATTORNEY-CLIENT PRIVILEGE

Crime/fraud exception, § 9:19 Discovery and, § 9:19 Joint defense and, § 9:19

ATTORNEY FEES AND COSTS

Export Trading Company Act and, § 8:5

Health Care Quality Improvement Act and, § 2:17

"Lodestar" calculation, § 9:27 National Cooperative Research and Production Act and, § 2:22

Recovery by defendants, § 9:27 Recovery by plaintiffs, § 9:27 Remedies, § 9:27 Rule 11 and other sanctions, § 9:27

ATTORNEY WORK-PRODUCT AND OTHER WORK-PRODUCT

Crime/fraud exception, § 9:21 Discovery of, § 9:21 Opinion work product, § 9:21

AVAILABILITY DEFENSE

Robinson-Patman Act (Clayton Act, Section 2), § 4:4

BARRIERS TO ENTRY

Attempted monopolization and, § 3:6

Market power and, §§ 2:10, 3:4

Mergers and, §§ 6:4, 6:5, 6:7, 6:8, 6:9

Monopoly power and, § 3:4
Rule of reason and, § 2:10
Single firm monopolization and,
§§ 3:3 to 3:5

BELOW-COST PRICING

See **Predatory Pricing** (this index)

BOYCOTTS

See **Group Boycotts** (this index)

BROKERAGE PAYMENTS

Robinson-Patman Act (Clayton Act, Section 2), § 4:5

BUNDLED DISCOUNTS

Monopolizing conduct and, § 3:5 Predatory pricing and, § 3:13 Tying and, § 2:18

BUSINESS JUSTIFICATION

Boycott defense, § 2:16 Monopolizing conduct and, § 3:5 "Naked" versus "non-naked" restraints and, §§ 2:10, 2:11, 2:13

Per se versus rule of reason treatment, § 2:9 Rule of reason and, § 2:10

Tying defense, **§§ 2:10**

BUYER LIABILITY

Robinson-Patman Act (Clayton Act, Section 2), § 4:7

CAUSATION

Antitrust injury and, § 9:6 Damages, § 9:25 Injunctive relief, § 9:26 Standing and, § 9:6

§ 4:3

Legislative history, § 4:2

CLASS ACTIONS CLAYTON ACT, SECTION 2 (ROBINSON-PATMAN ACT) Generally, § 9:22 —Cont'd Arbitration agreements and, "Like grade and quality" require-§ 9:22 ment, § 4:3 Certification of class, § 9:22 Meeting competition defense, Class Action Fairness Act, § 9:22 § 4:4 Expert testimony and, § 9:22 "Morton Salt" rule, § 4:3 Parens patriae actions as, § 9:22 Overview, § 4:3 Removal of state court class Predatory pricing and, § 4:3 actions, § 9:22 Primary line injury, § 4:3 Settlements and remedies, § 9:22 Remedies, § 4:2 Waiver of, § 9:22 "Sales" and "separate purchas-**CLAYTON ACT** ers" requirement, § 4:3 Section 2. See Clayton Act, Sec-Secondary line injury, § 4:3 tion 2 (Robinson-Patman Statutory language, § 4:1 **Act**) (this index) Section 3. See Clayton Act, Sec-CLAYTON ACT, SECTION 3 tion 3 (this index) Generally, § 5:1 et seq. Section 7 and 8. See Clayton Act, "Commodities" requirement, **Section 7 and 8** (this index) § 5:3 Differences from Sherman Act, CLAYTON ACT, SECTION 2 Section 1, § 5:3 (ROBINSON-PATMAN ACT) Exclusive dealing involving com-Generally, § 4:1 et seq. modities, § 5:5 Availability defense, § 4:4 Remedies, § 5:3 Brokerage and commercial brib-Statutory language, § 5:1 ery, § 4:5 Tying involving commodities, Buyer liability, § 4:7 § 5:4 Commerce requirement, § 4:3 **CLAYTON ACT, SECTION 7** "Commodities" requirement, AND 8 § 4:3 "Competing purchasers" require-Generally, § 6:1 et seq. ment, § 4:3 Agency guidelines, § 6:8 Cost justification as defense, § 4:4 horizontal mergers and acquisi-Damages, §§ 4:3, 9:25 tions, § 6:5 Defenses, § 4:4 vertical and conglomerate mergers, § 6:8 Discriminatory pricing, § 4:3 Defenses, § 6:9 Discriminatory promotional payments, services, and facilities, Enforcement, § 6:2 § 4:6 "Failing company" defense, § 6:9 Enforcement, § 4:2 Hart-Scott-Rodino Act, § 6:2 Functional discount defense, § 4:4 Herfindahl-Hirschman Index, "Indirect" price discrimination, § 6:5

Horizontal mergers and acquisi-

tions, §§ 6:3 to 6:5

CLAYTON ACT, SECTION 7 AND 8—Cont'd

Interlocking directorates, § 6:2
Joint ventures, § 2:22
Legislative history, § 6:2
Market definition, §§ 5:4, 6:4, 6:5
National Cooperative Research
and Production Act, § 2:22
Overview, § 6:2

Pre-merger filing requirements, § 6:2

Prima facie case, rebuttal, § 6:9
Rebuttal, prima facie case, § 6:9
Remedies, § 6:2
Statutory language, §§ 6:1, 6:2
Vertical and conglomerate mergers and acquisitions, §§ 6:6 to 6:8

CLAYTON ACT, SECTION 8

Interlocking directors and officers and, § 6:2
Statutory language, §§ 6:1, 6:2

CLEARLY ARTICULATED STATE POLICY

State Action immunity, § 8:7

COLGATE DOCTRINE

Unilateral conduct versus concerted action, § 2:4

COLLABORATIONS GUIDELINES

Horizontal non-price restraints and, § 2:13

Joint ventures and, § 2:22 Per se versus rule of reason treatment under, § 2:9

Price fixing and, § 2:11

Rule of reason analysis under, § 2:10

Safe harbor rule under, §§ 2:10, 2:22

COLLATERAL ESTOPPEL

Generally, § 9:12

COMBINATIONS

See Concerted Action (this index)

COMITY

Foreign commerce jurisdiction, § 9:3

COMMERCE

Domestic commerce, § 9:2

"Flow of commerce" test, § 9:2

Foreign commerce, § 9:3

Foreign Trade Antitrust Improvements Act, § 9:3

International comity, § 9:3

Mixed foreign and domestic commerce, § 9:3

"Substantial effects" test, § 9:2

"Trade or commerce" versus non-

commercial activities, § 2:10

COMMERCIAL BRIBERY

See Clayton Act, Section 2 (Robinson-Patman Act) (this index)

COMMODITIES REQUIREMENT

Clayton Act Sec. 3 exclusive dealing, § 5:3
Clayton Act Sec. 3 tying, § 5:3
Robinson-Patman Act Sec. 2 price discrimination, § 4:3

CONCERTED ACTION

Attempts to withdraw, § 2:4
Boycott claim, § 2:16
Circumstantial versus direct evidence, § 2:4
Colgate doctrine, § 2:4
Concerted versus unilateral conduct, generally, § 2:3 et seq.
Corporate affiliates and subsidiar-

ies and, § 2:7

Dealer complaints and pretermination discussions, § 2:5 Hub-and-spoke conspiracies, § 2:4

CONCERTED ACTION—Cont'd

Inter-firm communications, § 2:3 Intra-enterprise joint action, § 2:7 Involuntary co-conspirators and, §§ 2:4, 2:16, 9:25

Joint ventures and, § 2:7

Oligopolies and, §§ 2:4, 2:6, 2:11

Parallel pricing and other parallel behavior, §§ 2:4, 2:6

Resale price suggestions versus, § 2:12

Unilateral conduct versus, § 2:4 Withdrawal defense, § 2:4

CONGLOMERATE MERGERS

Clayton Act, Section 7 and 8, §§ 6:6 to 6:8

CONSPIRACIES

See Concerted Action and Conspiracies to Monopolize (this index)

CONSPIRACIES TO MONOPOLIZE

Incipient conspiracies to monopolize, § 3:9

Joint monopolization, § 3:8

CONTRACT TYING

Versus economic tying, see **Tying** (this index)

CONTRIBUTION

Damages, § 9:25

COPPERWELD DOCTRINE

Intra-enterprise joint action, § 2:7

COPYRIGHTS

Market power and, §§ 2:10, 3:4 Sham litigation involving, §§ 2:18, 3:5, 8:8

Tying "economic power" and, § 2:18

COST JUSTIFICATION DEFENSE

Robinson-Patman Act (Clayton Act, Section 2), § 4:4

COST-PRICE SQUEEZES

Monopolization and, §§ 3:5, 3:13

COVID-19

Antitrust enforcement and, §§ 2:2, 2:22, 3:2, 6:2, 7:2

Competitor collaborations and, § 2:22

HSR filings and, § 6:2

CROSS-ELASTICITY OF DEMAND

See **Relevant Market** (this index)

CUSTOMER ALLOCATIONS

Horizontal nonprice restraints and, § 2:13

Joint ventures and, § 2:9

Monopolizing conduct and, § 3:5

Rule of reason, § 2:10

Vertical nonprice restraints and, § 2:14

DAMAGES

Arbitration agreements and, § 9:25

Attorney fees, § 9:27

Causation and fact-of-injury, § 9:25

Contribution and, § 9:25

Expert testimony and, § 9:25

Involuntary co-conspirators and, § 9:25

Joint and several liability, § 9:25

Methods of calculating, § 9:25

Remoteness and speculativeness, § 9:25

Robinson-Patman Act and, § 4:3

Settlements and, §§ 9:22, 9:25

Standing to seek, §§ 9:7 to 9:9

Treble damages, generally, § 9:25

DEALERS

Colgate doctrine, § 2:4

Dealer complaints as evidence of concerted action, §§ 2:4, 2:5

DEALERS—Cont'd

Dealer terminations as group boycotts, § 2:16

Exclusive dealing and, §§ 2:19, 5:5

Pre-termination discussions as evidence of concerted action, §§ 2:4, 2:5

Reciprocal dealing and, § 2:20
Tying restraints and, §§ 2:18, 5:4
Vertical nonprice restraints and,
§ 2:14

Vertical price fixing and, § 2:12

DECEPTION

FTC Act and, § 7:2

Monopolizing conduct, § 3:5

Pick-Barth "unfair competition"
conspiracies, § 2:21

Restraints of trade and, § 2:10

Standard setting and, § 2:22

DE FACTO TYING

See **Tying** (this index)

DEFENSES

See specific offenses throughout this index

See also **Exemptions and Immunities** (this index)

DIFFERENTIAL PRICING

Predatory pricing and, § 3:13 Tying, § 2:18

DIRECTED VERDICTS

Motions, § 9:16

DISCOUNTS

Brokerage payments and, § 4:5
Bundled discounts as de facto
tying, § 2:18
Bundled discounts as monopolizing conduct, §§ 3:5, 3:13
Bundled discounts as price
discrimination, §§ 3:13, 4:3

Differential pricing, § 3:13

DISCOUNTS—Cont'd

Functional discounts, Robinson-Patman Act defense, § 4:4
Loyalty discounts, §§ 2:19, 3:13
Monopolization and, §§ 3:5, 3:13
Predatory pricing and, § 3:13
Price discrimination, Robinson-Patman Act, §§ 4:3, 4:6

DISCOVERY

Generally, § 9:18
Attorney-client privilege, § 9:19
Attorney work-product and other
work-product, § 9:21
Fifth Amendment privilege, § 9:20
Protective orders, § 9:18

DISCRIMINATORY PRICING

See Clayton Act, Section 2 (Robinson-Patman Act) (this index)

DISCRIMINATORY PROMOTIONAL PAYMENTS, SERVICES, AND FACILITIES

See Clayton Act, Section 2 (Robinson-Patman Act) (this index)

DISMISSAL

Concerted action and motions for, §§ 2:4, 9:14

Motions to dismiss, § 9:14

DOMESTIC COMMERCE

"Flow of commerce" test for jurisdiction, § 9:2

Mixed domestic and foreign commerce, § 9:3

Robinson-Patman Act and, § 4:3 Subject matter jurisdiction, § 9:2 "Substantial effects" test for jurisdiction, § 9:2

DUAL DISTRIBUTION RESTRAINTS

Hybrid restraints, § 2:14

Index-6

DUAL DISTRIBUTION RESTRAINTS—Cont'd

Manufacturers and, § 2:14
Vertical nonprice restraints and, § 2:14

DUTY TO DEAL

See **Refusals to Deal** (this index)

ECONOMIC POWER

See Market Power (this index)

EFFICIENCIES

Joint ventures and, § 2:22 Mergers and, §§ 6:5, 6:8, 6:9 Monopolization and, § 3:5 Rule of reason and, § 2:10

ENFORCEMENT

Clayton Act
Section 2 (Robinson Patman
Act), § 4:2
Section 7 and 8, § 6:2
FTC Act, Section 5, § 7:2
Horizontal mergers and acquisitions, § 6:2
Litigation procedure, standing, § 9:8
Mergers, § 6:2
Standing to sue, § 9:8

ENTRENCHMENT DOCTRINE

Conglomerate mergers and, §§ 6:7, 6:8
Vertical mergers and, §§ 6:7, 6:8

ENTRY BARRIERS

See Market Power (this index)

EQUAL INVOLVEMENT DEFENSE

Antitrust injury standing and, § 9:6
Indirect purchaser standing and, § 9:9

ESSENTIAL FACILITIES DOCTRINE

Attempted monopolization, §§ 3:6, 3:12

ESSENTIAL FACILITIES DOCTRINE—Cont'd

Efficient enforcer considerations, § 9:8
Group boycotts, §§ 2:16, 3:12
Monopolization, §§ 3:5, 3:12

EVIDENCE

Attorney work-product, § 9:21
Collateral estoppel, § 9:12
Conspiracy proof, § 2:4
Expert testimony, §§ 2:10, 3:4,
3:5, 3:13, 6:4, 9:22, 9:25
"Plus factors" evidence, §§ 2:4,
2:6
Prejudicial evidence, §§ 2:4, 2:6,
9:18
Privileged communications,
§§ 9:19, 9:20

EXCLUSIVE DEALING

Generally, §§ 2:19, 5:5
Involving "commodities" only,
§ 5:5
Loyalty discounts, §§ 2:19, 3:13
Monopolizing conduct and, § 3:5
Rule of reason and, §§ 2:19, 5:5

EXEMPTIONS AND IMMUNITIES

Generally, § 8:1 et seq.
Act of state, foreign commerce, § 8:10

Agricultural cooperatives exemption, § 8:4

Capper-Volstead Act (agricultural cooperatives exemption), § 8:4

Common carrier exemption, § 8:1
Export trade exemptions, § 8:5
Export Trading Company Act
(export exemptions), § 8:5
Filed rate doctrine, § 8:6
Foreign commerce, § 8:10
Foreign sovereign compulsion,
foreign commerce, § 8:10

EXEMPTIONS AND IMMUNITIES—Cont'd

Foreign Sovereign Immunities Act, § 8:10 Implied immunity, § 8:6 Insurance exemption, § 8:2 Labor exemption, § 8:3

Local Government Antitrust Immunity Act, § 8:7

McCarran-Ferguson Act (insurance exemption), § 8:2

Noerr-Pennington immunity, § 8:8 Non-statutory labor exemption,

§ 8:3 Norris-LaGuardia Act (labor exemption), § 8:3

Pervasive government regulation, §§ 8:6, 8:9

Petitioning governmental bodies, § 8:8

Preemption of anticompetitive state laws, § 8:7

Primary jurisdiction, § 8:9
Shipping Act exemption, § 8:1

Sovereign immunity, foreign commerce, § 8:10

State Action immunity, § 8:7
Statutory exemptions, generally, § 8:1

Webb-Pomerene Act (export trade exemption), § 8:5

EXPERT TESTIMONY

Class certification and, § 9:22
Damages and, § 9:25
Market definition and, § 3:4
Mergers and, § 6:4
Monopolizing conduct and, § 3:5
Predatory pricing and, § 3:13
Rule of reason and, § 2:10

EXPORT TRADE EXEMPTIONSGenerally, § 8:5

EXPORT TRADING COMPANY ACT

Generally, § 8:5

FAILING COMPANY DEFENSE

Mergers and, §§ 6:5, 6:9

FALSE ADVERTISING AND TRADE LIBEL

Monopolizing conduct and, § 3:5
Pick-Barth "unfair competition"
conspiracies and, § 2:21
Rule of reason and, § 2:10
"Trade or commerce" requirement and, § 2:10

FARMS

See Agricultural Cooperatives
Exemption (this index)

FEDERAL TRADE COMMISSION

See FTC Act, Section 5 (this index)

FIFTH AMENDMENT PRIVILEGE

Discovery, § 9:20
"Use" versus "transactional"
immunity, § 9:20

FILED RATE DOCTRINE

Government tariffs and, § 8:6 Implied immunity and, § 8:6

FOREIGN COMMERCE

Act of state doctrine, § 8:10 Export trade exemptions, § 8:5 Export Trading Company Act (export exemptions), § 8:5

Foreign sovereign compulsion doctrine, § 8:10

Foreign Sovereign Immunities Act, § 8:10

Foreign Trade Antitrust Improvements Act, § 9:3

International comity as limit on jurisdiction, § 9:3

Jurisdiction over foreign commerce, § 9:3

Mixed foreign and domestic commerce, § 9:3

Index-8

FOREIGN COMMERCE

—Cont'd

Sovereign immunity defense, § 8:10

Webb-Pomerene Act (export exemptions), § 8:5

FOREIGN SOVEREIGN **COMPULSION**

Exemptions and immunities, § 8:10

FOREIGN TRADE ANTITRUST IMPROVEMENTS ACT

Foreign commerce, § 9:3

FTC ACT, SECTION 5

Generally, §§ 7:1, 7:2

Enforcement, § 7:2

Exemptions, § 8:1

Foreign Trade Antitrust Improvements Act as limit on, § 9:3

Other antitrust laws and, § 7:2

Private actions and, § 7:2

Statutory language, § 7:1 Unfair methods of competition, § 7:2

FULL-LINE FORCING

As exclusive dealing, § 2:18 Versus tying, § 2:18

FUNCTIONAL DISCOUNT **DEFENSE**

Price discrimination and, § 4:4 Robinson-Patman Act (Clayton Act, Section 2), § 4:4

GEOGRAPHIC MARKET

See **Relevant Market** (this index)

GROUP BOYCOTTS

Boycotts and Sherman Act Sec. 1, generally, §§ 2:15 to 2:17

Boycotts to raise or control prices, § 2:16

Control of essential resource and, § 2:16

GROUP BOYCOTTS—Cont'd

Health care providers and, § 2:17 Horizontal boycotts, § 2:16

Market power and, § 2:16

Per se versus rule-of-reason

boycotts, § 2:16

Rule of reason and, §§ 2:10, 2:16

Vertical boycotts, § 2:16

HART-SCOTT-RODINO ACT

Mergers and acquisitions, premerger filing requirement, § 6:2

HEALTH CARE QUALITY IMPROVEMENT ACT

Sherman Act, Section 1, group boycotts, § 2:17

HERFINDAHL-HIRSCHMAN INDEX

Mergers and acquisitions, market concentration and, §§ 6:5, 6:8

HORIZONTAL MERGERS AND ACQUISITIONS

Agency guidelines, § 6:5

Clayton Act Sec. 7, generally, § 6:9

Clayton Act Sec. 7 and 8, generally, §§ 6:1 to 6:5

Defenses, § 6:9

Enforcement, § 6:2

Failing company defense, § 6:9

Herfindahl-Hirschman Index,

§ 6:5

Joint ventures and, § 2:22

Market definition, §§ 5:4, 6:4, 6:5

Monopolization and, § 5:5

Pre-merger filing requirements,

§ 6:2

Prima facie case, § 6:4

HORIZONTAL NON-PRICE RESTRAINTS

Agency "Collaborations" guidelines, § 2:13

HORIZONTAL NON-PRICE RESTRAINTS—Cont'd

Customer allocations, § 2:13
Hybrid horizontal-vertical
nonprice restraints, § 2:14
Joint ventures and, § 2:22
"Naked" versus "ancillary"
restraints, § 2:13
Output restraints, § 2:13
Per se versus rule-of-reason treatment, §§ 2:9, 2:13
"Reverse payment" patent settlements as, § 2:13
Territorial allocations, § 2:13

HORIZONTAL PRICE FIXING

Agency "Collaboration"
guidelines, § 2:11

Hybrid horizontal-vertical price
restraints, § 2:12

Joint ventures and, § 2:22
"Naked" versus "ancillary"
restraints, § 2:11

Per se versus rule-of-reason treatment, §§ 2:9, 2:11

HUB-AND-SPOKE CONSPIRACIES

Conspiracies generally and, §§ 2:4, 2:10 Vertical boycotts and, § 2:16

HYBRID

GOVERNMENTAL-PRIVATE RESTRAINTS

Preemption of state laws and, § 8:7

ILLEGAL BROKERAGE PAYMENTS

Price discrimination and, § 4:5 Robinson-Patman Act (Clayton Act, Section 2), § 4:5

ILLINOIS BRICK

See **Indirect Purchaser Doctrine** (this index)

IMMUNITIES

See Exemptions and Immunities (this index)

IMPLIED IMMUNITY

Generally, § 8:6
Pervasive government regulation and, § 8:6
Versus primary jurisdiction, § 8:6

INDEPENDENT CONDUCT

See **Unilateral Conduct** (this index)

INDIRECT PURCHASERS

Price discrimination and, §§ 4:3, 4:6

Standing and, § 9:9

INEXTRICABLY INTERTWINED INJURY

Antitrust standing and, § 9:8

INFORMATION EXCHANGES

Price fixing and, § 2:11

INJUNCTIVE RELIEF

Attorney fees, § 9:27 Permanent injunctions, § 9:26 Preliminary injunctions, § 9:26 Standing to seek, §§ 9:6 to 9:9

INSURANCE

McCarran-Ferguson Act (insurance exemption), § 8:2

INTELLECTUAL PROPERTY LICENSING GUIDELINES

Exclusive dealing and, § 2:19
Horizontal nonprice restraints and, § 2:13

Joint ventures and, § 2:22

Price restraints and, § 2:11

Refusals to deal and, § 3:5

Rule of reason treatment under, § 2:10

Safe harbor under rule, §§ 2:10, 2:22

Tying restraints and, § 2:18

INTENT

Attempted monopolization and, § 3:6

Conspiracies to monopolize and, § 3:9

Monopolization and, § 3:5 Rule of reason and, § 2:10

INTERNATIONAL COMITY

Subject matter jurisdiction and, § 9:3

INTRA-ENTERPRISE JOINT ACTION

As "unilateral" rather than "concerted" action, § 2:7 Corporate affiliates and, § 2:7 Joint ventures and, § 2:7

INVOLUNTARY CO-CONSPIRATORS

Boycotts and, § 2:16
Concerted action and, § 2:4
Contribution between defendants and, § 9:25
Liability of, §§ 2:4, 2:10, 9:25

JOINT ACTION

See Concerted Action (this index)

JOINT AND SEVERAL LIABILITY

Contribution and, § 9:25 Involuntary coconspirators and, §§ 2:10, 9:25

JOINT MONOPOLIZATION

Sherman Act, Section 2, § 3:8 Versus "incipient" conspiracies to monopolize, §§ 3:8, 3:9

JOINT VENTURES

Analysis of, § 2:22
Ancillary restraints doctrine and, § 2:22
Capacity to conspire of, § 2:7

Intra-enterprise conspiracy doctrine, § 2:7

JOINT VENTURES—Cont'd

National Cooperative Research and Production Act, § 2:22 Standard setting and, § 2:22

JUDGMENT AS A MATTER OF LAW

Directed verdict, § 9:16 Judgment n.o.v., § 9:16 Summary judgment, § 9:15

JUDGMENT N.O.V.

Motion, § 9:16

JURISDICTION

Comity considerations, § 9:3

Domestic commerce jurisdiction,
§ 9:2

Foreign commerce jurisdiction, § 9:3

Foreign Trade Antitrust Improvements Act, § 9:3

Personal jurisdiction, § 9:4

Primary jurisdiction, exemptions and immunities, § 8:9

LABOR EXEMPTION

Generally, § 8:3
Employers and, § 8:3
Preemption of state laws and, § 8:3
Unions and, § 8:3

LACHES

Generally, § 9:11

LEGISLATIVE HISTORY

Clayton Act Sec. 2 (price discrimination), § **4:2** Clayton Act Sec. 7 and 8 (mergers), § **6:2**

LIMITATION OF ACTIONS

Laches, § 9:11 Statute of limitations, § 9:11

LITIGATION PROCEDURE

Generally, § 9:1 et seq.
Antitrust injury standing, § 9:6

LITIGATION PROCEDURE LITIGATION PROCEDURE —Cont'd —Cont'd Arbitration agreements, §§ 9:22, Parens patriae actions, § 9:22 9:25 Personal jurisdiction, § 9:4 Article III standing, § 9:7 Remedies Attorney-client privilege, § 9:19 generally, § 9:23 et seq. Attorney fees, § 9:27 attorney fees and costs, § 9:27 Attorney work-product, § 9:21 Clayton Act Sec. 2, § 4:2 Class actions, § 9:22 Clayton Act Sec. 3, § 5:3 Collateral estoppel, § 9:12 Clayton Act Sec. 7 and 8, § 6:2 Commerce requirements, subject contribution, § 9:25 matter jurisdiction, §§ 9:1 to damages, § 9:25 9:3 FTC Act Sec. 5, § 7:2 Damages, § 9:25 injunctive relief, § 9:26 Directed verdict, § 9:16 Sherman Act Sec. 1, § 2:2 Discovery, §§ 9:17, 9:18 Sherman Act Sec. 2, § 3:2 Dismissal, motions, § 9:14 statutory language, § 9:24 Domestic commerce, subject mattreble damages, § 9:25 ter jurisdiction, § 9:2 Res judicata. § 9:12 Equal involvement defense, § 9:6 Sham litigation, §§ 3:5, 8:8 Expert testimony, §§ 2:10, 3:4. Standing 3:5, 3:13, 6:4, 9:22, 9:25 generally, § 9:5 et seq. Fifth Amendment privilege, § 9:20 antitrust injury, § 9:6 Foreign commerce, § 9:3 Article III standing, § 9:7 Foreign Trade Antitrust Improveenforcement considerations, ments Act, § 9:3 § 9:8 Injunctions, § 9:26 equal involvement defense, Interlocutory appeals, §§ 7:2, 8:7 § 9:6 International comity, subject matindirect purchaser doctrine, ter jurisdiction, § 9:3 § 9:9 Judgment as a matter of law, Statute of limitations, § 9:11 § 9:16 Summary judgment, § 9:15 Judgment n.o.v., § 9:16 Venue, § 9:10 Laches, § 9:11 Limitation of actions, § 9:11 LOCAL GOVERNMENT Motions ANTITRUST IMMUNITY directed verdict, § 9:16 ACT dismissal, § 9:14 Generally, § 8:7 judgment as a matter of law, State Action immunity and, § 8:7 § 9:16 LOCKED-IN CUSTOMERS judgment n.o.v., § 9:16 Market definition and, § 3:4 new trial, § 9:16 summary judgment, § 9:15 Monopolization claims and, § 3:5 New trial motions, § 9:16 Monopoly power and, § 3:4 Noerr-Pennington immunity, § 8:8 Tying claims and, § 2:18

MARKET DEFINITION

See **Relevant Market** (this index)

MARKET POWER

Aftermarkets and, §§ 2:18, 3:4
Barriers to entry and, §§ 2:10, 3:4, 6:7, 6:9

Contract power distinguished from, §§ 2:18, 3:4

Direct versus indirect proof of, §§ 2:10, 3:4

Group boycotts and "market power" element, § 2:16

Herfindahl-Hirschman Index, § 6:5

"Locked-in" customers and, §§ 2:18, 3:4

Market power "filter," rule of reason, § 2:10

Market share and, §§ 2:10, 3:4, 6:5, 6:6

Merger claims and, §§ 6:4, 6:5 Monopolization claims and, § 3:4 Monopoly power, § 3:4

Monopoly power versus, § 2:10

Rule of reason and, § 2:10

Tying claims and "economic power" element, § 2:18

Vertical nonprice restraints and, § 2:14

MARKET SHARE

Agency "safe harbors" and, §§ 2:10, 2:11, 2:13, 2:22

Attempted monopolization and, § 3:6

Herfindahl-Hirschman Index and, § 6:5

Market definition and, §§ 2:10, 3:4

Market power and, §§ 2:10, 2:18, 3:4

Mergers and, §§ 6:4, 6:5, 6:7, 6:8 Monopoly power and, § 3:4 Rule of reason and, § 2:10

MARKET SHARE—Cont'd

Single firm monopolization and, §§ 3:3 to 3:5

MEETING COMPETITION DEFENSE

Robinson-Patman Act (Clayton Act, Section 2), § 4:4

MERGERS

Agency guidelines

horizontal mergers, § 6:5

vertical and conglomerate mergers, § 6:8

Clayton Act, Section 8, generally, § 6:2

Clayton Act, Section 7 and 8, generally, § 6:1 et seq.

Conglomerate mergers and acquisitions, §§ 6:6 to 6:8

Defenses, § 6:9

Efficiencies defense, §§ 6:5, 6:8, 6:9

Enforcement, § 6:2

Entrenchment and non-horizontal mergers, §§ 6:7, 6:8

Expert testimony and, § 6:4

Failing company defense, §§ 6:5, 6:9

Hart-Scott-Rodino Act requirements, § 6:2

Horizontal mergers and acquisitions, §§ 6:3 to 6:5

Interlocking directors and officers, § 6:2

Potential entry and horizontal mergers, §§ 6:4, 6:5

Potential entry and non-horizontal mergers, §§ 6:7, 6:8

Pre-merger notification requirements, § 6:2

Set-off defense, § 6:9

Vertical mergers and acquisitions, §§ 6:6 to 6:8

MONOPOLIZATION

Attempted monopolization, § 3:6

MONOPOLIZATION—Cont'd

Bundled discounts as form of, §§ 3:5, 3:13

Conspiracies to monopolize, §§ 3:7 to 3:9

Cost-price squeezes as form of, §§ 3:5, 3:13

Essential facilities doctrine, § 3:12 Expert testimony and, § 3:5

Market definition, § 3:4

Monopolizing conduct, generally, § 3:5

Monopoly leveraging doctrine, § 3:11

Monopoly power, § 3:4

Monopsony power, §§ 3:13, 6:5

Predatory pricing as form of, § 3:13

Single firm monopolization, §§ 3:3 to 3:5

MONOPOLIZING CONDUCT

Generally, § 3:5

Bundled discounts, §§ 3:5, 3:13

Cost-price squeezes by verticallyintegrated monopolists, §§ 3:5, 3:13

Differential pricing, § 3:13

Essential facilities refusals to deal, §§ 3:5, 3:12

False advertising and trade libel as, § 3:5

as, § 3:5
"Locked-in" customers and, § 3:5
Monopoly leveraging, § 3:11

Patent fraud as, § 3:5

Patent "hold ups" as, §§ 2:22, 3:5

Per se violations as, § 3:5

Predatory pricing, §§ 3:5, 3:13

Product design changes as, § 3:5

Refusals to deal generally, § 3:5

Sham litigation, §§ 3:5, 8:8

Tortious and fraudulent conduct affecting markets as a whole, § 3:5

Trade or commerce requirement, § 3:2

MONOPOLIZING CONDUCT

-Cont'd

Unfair competition as, §§ 2:21, 3:5

MONOPOLY LEVERAGING

As violation of Sherman Act Sec. 2, § 3:11

Second market, § 3:11

Versus "essential facilities" refusals to deal, § 3:12

MONOPOLY POWER

Direct proof of, § 3:4

Entry barriers and, § 3:4

Indirect proof of, § 3:4

"Lock-in" customers and, § 3:4

Market definition and, § 3:4

Market share and, § 3:4

Monopsony power versus, §§ 3:13, 6:5

Versus rule of reason "market power," § 2:10

Versus tying "economic power," § 2:18

MOTIONS

Class certification, § 9:22

Directed verdict, § 9:16

Dismiss, § 9:14

Expert testimony, motions to exclude, §§ 2:10, 3:4, 3:5, 3:13, 6:4, 9:22, 9:25

Judgment as a matter of law, § 9:16

Judgment n.o.v., § 9:16

New trial, § 9:16

Summary judgment, § 9:15

NAKED RESTRAINTS

Agency guidelines, §§ 2:11, 2:13, 2:22

Ancillary restraints versus,

§§ 2:11, 2:13, 2:16, 2:22

Boycotts and, § 2:16

Horizontal market allocations and, § 2:13

NAKED RESTRAINTS—Cont'd

Horizontal price fixing and, § 2:11 Joint ventures and, § 2:22

NATIONAL COOPERATIVE RESEARCH AND PRODUCTION ACT

Joint ventures generally, and, § 2:22

Non-marketing production joint ventures, and, § 2:22

Research and development joint ventures, and, § 2:22

Standards development joint ventures, and, § 2:22

NOERR-PENNINGTON

Exemptions and immunities, § 8:8 Petitioning government bodies, § 8:8

Relationship to State Action immunity, § 8:8

Standard setting and, § 8:8

NON-COMMERCIAL ACTIVITIES

Versus commercially-motivated group boycotts, § 2:16

Versus "trade or commerce" covered by Sherman Act, §§ 2:10, 3:2

NON-NAKED TRADE RESTRAINTS

Horizontal group boycotts and, § 2:16

Horizontal nonprice restraints and, § 2:13

Horizontal price fixing and, § 2:11 "Quick look" rule of reason and, § 2:10

NON-PRICE RESTRAINTS

See Horizontal Non-Price Restraints; Vertical Non-Price Restraints (this index)

NOTICE PLEADING

Motions to dismiss and, § 9:14

N.O.V. JUDGMENTS

Generally, §§ 9:13, 9:16

OLIGOPOLIES

Concerted action and, §§ 2:4, 2:6 Price fixing and, §§ 2:6, 2:11

OUTPUT RESTRAINTS

Horizontal non-price restraints and, § 2:13

Vertical non-price restraints and, § 2:14

PARALLEL BEHAVIOR

See Concerted Action (this index)

PARALLEL PRICING

As evidence of concerted action, §§ 2:4, 2:6

Price fixing and, §§ 2:4, 2:6, 2:11

PARENS PATRIAE ACTIONS

Generally, § 9:22

Class actions and, § 9:22

PATENTS

FRAND licensing commitments and, § 2:22

Market power and, §§ 2:10, 2:18, 3:4

Patent fraud, § 3:5

Patent "hold ups," §§ 2:22, 3:5

Reverse payment settlements, § 2:13

Sham litigation involving, §§ 3:5, 8:8

Standard setting and, § 2:22
Tying "economic power" and,
§ 2:18

PER SE

Boycotts as quasi-per se offense, § 2:16

Horizontal non-price restraints as per se offense, § 2:13

PER SE-Cont'd

Price fixing as per se offense, §§ 2:11 to 2:15

Sherman Act, Section 1, generally, §§ 2:9, 2:10

Tying as quasi-per se offense, § 2:18

Versus rule of reason, § 2:9

PERSONAL JURISDICTION

Generally, § 9:4

PERVASIVE GOVERNMENT REGULATION

Implied immunity and, § 8:6
Primary agency jurisdiction and, § 8:9

State law preemption and, § 8:7

PETITIONING GOVERNMENT BODIES

See **Noerr-Pennington** (this index)

PICK-BARTH "UNFAIR COMPETITION" CONSPIRACIES

Sherman Act, Section 1, § 2:21

"PLUS FACTORS" EVIDENCE

Concerted action and, §§ 2:4, 2:6, 9:14

POLITICAL ACTION

Commercial action versus, § 2:10 Noerr-Pennington doctrine and, § 8:8

POTENTIAL ENTRY

Actual potential entrant doctrine, mergers, §§ 6:7, 6:8

Entry barriers and, §§ 2:10, 3:5, 6:4, 6:5

Market power and, §§ 2:10, 3:5, 6:4, 6:5

Perceived potential entrant doctrine, mergers, §§ 6:7, 6:8

PREDATORY PRICING

Below-cost pricing as, § 3:13 Bundled discounts and, §§ 3:5, 3:13

Clayton Act, Section 2 (Robinson-Patman Act), § 4:3

Cost-price squeezes and, § 3:5

Differential pricing, § 3:13

Expert testimony and, § 3:13

Monopsonies, § 3:13

Recoupment and, § 3:13

Sherman Act, Section 2, §§ 3:5, 3:13

PREEMPTION

"Hybrid" restraints and, § 8:7
Implied antitrust immunity under other federal law, § 8:6

Preemption of state law by federal law, §§ 8:3, 8:6, 8:7

Relationship to State Action immunity, § 8:7

PRE-TERMINATION DISCUSSIONS WITH DEALERS

As evidence of "concerted action," §§ 2:4, 2:5

Colgate doctrine, §§ 2:4, 2:5

PRICE-COST SQUEEZES

Monopolization and, § 3:5

PRICE DISCRIMINATION

See Clayton Act, Section 2 (Robinson-Patman Act) (this index)

PRICE FIXING

Agents versus resellers and, § 2:12 Bid rigging, § 2:11

Cooperative advertising program and, § 2:12

Horizontal price fixing, Sherman Act, Section 1, § 2:11

Hybrid governmental-private price restraints, §§ 2:11, 8:7

PRICE FIXING—Cont'd

Hybrid horizontal-vertical price restraints, § 2:12 Indirect versus direct horizontal price fixing, § 2:11 Information exchanges versus price fixing, § 2:11 Joint ventures and, § 2:22 "Naked" versus "ancillary" price restraints, §§ 2:11, 2:12 Oligopolies and, §§ 2:6, 2:11 Price-motivated boycotts, § 2:16 Price suggestions versus price fixing, § 2:12 Single entity doctrine, § 2:7 Unilateral dealer termination and refusals to deal, versus price fixing, §§ 2:5, 2:12

PRICE RESTRAINTS

See Horizontal Price Restraints; Price Fixing; Vertical Price Restraints (this index)

Vertical price fixing, Sherman Act,

Section 1, § 2:12

PRICE "SUGGESTIONS"

Versus price fixing, § 2:12

PRICING

Differential pricing, § 2:18
Discount bundling, § 3:13
Discriminatory pricing, RobinsonPatman Act (Clayton Act,
Section 2), § 4:3
Horizontal price fixing, § 2:11
Parallel pricing, Sherman Act,
Section 1, § 2:6
Predatory pricing, § 3:13
Price-cost squeezes, §§ 3:5, 3:13
Vertical price fixing, § 2:12

PRIMA FACIE CASE

Rebuttal, Clayton Act, Section 7, § 6:9

PRIMARY JURISDICTION

As basis for staying judicial action, § 8:9
Statute of limitations trap, § 8:9
Versus implied immunity, §§ 8:6, 8:9

PRIMARY LINE INJURY

See Clayton Act, Section 2 (Robinson-Patman Act) (this index)

PRIVILEGE

Attorney-client privilege, § 9:19
Attorney work-product privilege,
§ 9:21
Fifth Amendment privilege, § 9:20

PRODUCT DESIGN CHANGES

Monopolizing conduct and, § 3:5 Standard setting and, § 2:22

PRODUCT HOPPING

Monopolizing conduct and, § 3:5

PRODUCT MARKET

See **Relevant Market** (this index)

PROMOTIONAL DISCRIMINATION

Discriminatory promotional payments, services, and facilities, § 4:6

See also Clayton Act, Section 2 (Robinson-Patman Act) (this index)

"QUICK LOOK" RULE OF REASON

Sherman Act, Section 1, § 2:10 Versus full rule of reason, § 2:10 Versus per se rules, § 2:9

REBUTTAL

Prima facie case, Clayton Act, Section 7, § 6:9

RECIPROCAL DEALING

As consideration in non-horizontal merger cases, § 6:7
As violation of Sherman Act, Section 1, § 2:20
Relationship to tying, § 2:20

REFUSALS TO DEAL

Attempted monopolization and, § 3:6
Colgate doctrine and, § 2:4
Essential facilities doctrine and, § 3:12
Horizontal boycotts and, § 2:16
Monopolization and, § 3:5

Vertical boycotts and, § 2:16

RELEVANT MARKETS

Agency guidelines and, § 6:5
Attempted monopolization and,
§ 3:6
Conspiracies to monopolize and,
§ 3:9
Cross-elasticity of demand and,
§ 8 3:4, 3:6
Cross-elasticity of supply and,
§ 3:4

Expert testimony and, § 3:4
Geographic market, §§ 3:4, 6:5
"Hypothetical monopolists" test,
§§ 3:4, 6:5
Mergers and, §§ 6:4, 6:5, 6:7, 6:8

Monopolization and, § 3:4
Product market, §§ 3:4, 6:5
Product substitutability and,
§§ 3:4, 6:5
"Ouisk look" approach, §§ 3:4

"Quick look" approach, §§ 2:10, 3:4

Rule of reason and, § 2:10 Submarkets, § 3:4

REMEDIES

Generally, § 9:23 et seq. Attorney fees, § 9:27 Clayton Act Sec. 2 (price discrimination), § 4:2

REMEDIES—Cont'd

Clayton Act Sec. 3, § 5:3
Clayton Act Sec. 7 and 8 (mergers), § 6:2
Contribution, § 9:25
Costs, § 9:27
Damages, § 9:25
FTC Act Sec. 5, § 7:2
Injunctive relief, § 9:26
Preliminary injunctions, § 9:26
Sherman Act Sec. 1, § 2:2
Sherman Act Sec. 2, § 3:2
Statutory language, § 9:24
Treble damages, § 9:25

REMOVAL

Class Action Fairness Act and, § 9:22

RESALE PRICE MAINTENANCE

See Vertical Price Fixing (this index)

RESEARCH & DEVELOPMENT

Joint ventures and, § 2:22
National Cooperative Product Act and, § 2:22
Standard setting and, § 2:22

RES JUDICATA

Generally, § 9:12

REVERSE PAYMENT SETTLEMENT AGREEMENTS

Horizontal restraints and, § 2:13 Monopolization and, § 3:5

ROBINSON-PATMAN ACT (CLAYTON ACT, SECTION 2)

See Clayton Act, Section 2 (Robinson-Patman Act) (this index)

RULE OF REASON

Generally, § 2:10

RULE OF REASON—Cont'd "Aggregated effects" analysis and, § 2:10 Burden-shifting framework of, § 2:10 Efficiencies and, § 2:10 Exclusive dealing and, § 2:19 Expert testimony and, § 2:10 False advertising and trade label as violation of, § 2:10 Joint ventures and, § 2:22 Market power "filter," § 2:10 "Naked" versus "ancillary" restraints, § 2:10 Non-commercial activities and, § 2:10 "Pick-Barth" unfair competition conspiracies, § 2:21 "Quick look" rule of reason, § 2:10 Relevant market and, § 2:10 Set-off defense and, § 2:10 Social goals other than competition and, § 2:10 "Trade or commerce" requirement, § 2:10 Tying and, §§ 2:18, 5:4 "Unfair competition" as violation of, §§ 2:10, 2:22 Versus per se rules, § 2:9 Vertical non-price restraints and, § 2:14 Vertical price restraints and, § 2:12

RULE 11 SANCTIONS

Attorney fees and, § 9:27

SAFE HARBORS

See **Agency Safe Harbors** (this index)

SECONDARY LINE INJURY

See Clayton Act, Section 2, (Robinson-Patman Act) this index

SECONDARY MARKET

Monopoly leveraging, § 3:11

SET-OFF DEFENSE

Mergers and, § 6:9
Rule of reason and, § 2:10

SETTLEMENTS

Class actions and, § 9:22 Contributions and, § 9:25 Reverse payment settlements, §§ 2:13, 3:5

SHAM LITIGATION

See **Noerr-Pennington** this index

SHERMAN ACT

Recent developments generally, § 1:1 et seq. overview, § 1:1 Section 1, developments, § 1:2 Section 2, developments, § 1:3 Significant recent developments, § 1:4

SHERMAN ACT, SECTION 1

For matters regarding Section 2 of Sherman Act, see **Sherman Act, Section 2** (this index)

Generally, § 2:1 et seq.

Boycotts, §§ 2:15 to 2:17

"Concerted action"

generally, § 2:3 et seq.

dealer complaints and pretermination discussions with replacement dealers, § 2:5

intra-enterprise joint action, § 2:7

parallel pricing and other parallel behavior, § 2:6

unilateral conduct versus, § 2:4

Dealer complaints and pretermination discussions with replacement dealers, § 2:5

Dual distribution restraints, § 2:14 Exclusive dealing, § 2:19

SHERMAN ACT, SECTION 1 —Cont'd

Foreign Trade Antitrust Improvements Act as limit on, § 9:3 Group boycotts, §§ 2:15 to 2:17 Health Care Quality Improvement Act, group boycotts, § 2:17

Horizontal non-price restraints, § 2:13

Horizontal price fixing, § 2:11

Hybrid horizontal-vertical
restraints, §§ 2:12, 2:14, 2:16

Hybrid restraints, § 2:14

Hybrid restraints, § 2:14

Overview, § 2:2

Per se versus rule of reason analysis, §§ 2:8 to 2:10

Price fixing, horizontal and vertical price fixing, §§ 2:11, 2:12 "Quick look" rule of reason, § 2:10

Recent developments, § 1:2 Reciprocal dealing, § 2:20 Rule of reason, § 2:10

Statutory language, § 2:1

Vertical non-price restraints, § 2:14

Vertical price fixing generally, § 2:12 et seq. price "suggestions" versus price "maintenance," § 2:12

SHERMAN ACT, SECTION 2

Generally, § 3:1 et seq.
Attempted monopolization, § 3:6
Bundled discounts, § 3:13
Conspiracies to monopolize,
§§ 3:7 to 3:9

Differential pricing, § 3:13
Essential facilities, §§ 3:10, 3:12
Foreign Trade Antitrust Improve-

ments Act as limit on, § 9:3
Incipient conspiracies to
monopolize, § 3:9

Joint monopolization, § 3:8

SHERMAN ACT, SECTION 2 —Cont'd

Monopolizing conduct, § 3:5 Monopoly leveraging, §§ 3:10, 3:11

Monopoly power, § 3:4 Overview, § 3:2 Predatory pricing, § 3:13 Recent developments, § 1:3 Relevant market, defining, § 3:4 Single firm monopolization,

§§ 3:3 to 3:5 Statutory language, **§ 3:1**

SOVEREIGN IMMUNITY

Foreign commerce, exemptions and immunities, § 8:10

STANDARDS SETTING

Abuses of standard-setting process, § 2:22

FRAND licensing commitments and, § 2:22

Joint ventures and, § 2:22

Monopolization and, § 3:5

National Cooperative Research and Production Act, § 2:22

Noerr-Pennington immunity and, § 8:8

Patent "hold ups" and, §§ 2:22, 3:5

STANDING TO SUE

Generally, § 9:5 et seq.
Antitrust injury, § 9:6
Article III standing and, § 9:7
Efficient enforcer considerations,
§ 9:8

Equal involvement defense, §§ 9:6, 9:9

Indirect purchaser doctrine and, § 9:9

Injunctions, differences in, § 9:9

STATE ACTION

As antitrust defense, exemptions and immunities, § 8:7

STATE ACTION—Cont'd

Collateral order doctrine and appeals based upon, § 8:7 Relationship to Noerr-Pennington immunity, § 8:8 Relationship to preemption of state laws, § 8:7

STATUTE OF LIMITATIONS

Generally, § 9:11
Relationship to laches defense,
§ 9:11

STATUTORY EXEMPTIONS

Generally, § 8:1 et seq.
Agricultural cooperatives exemption, § 8:4
Export trade exemption, § 8:5

Export Trading Company Act, § 8:5

Insurance exemption, § 8:2 Labor exemption, § 8:3 Webb-Pomerene Act, § 8:5

STATUTORY LANGUAGE

Clayton Act

Section 2, § 4:1

Section 3, § 5:1

Section 7, § 6:1

Section 8, § 6:1

FTC Act, Section 5, § 7:1

Remedies, Clayton Act, § 9:24

Robinson-Patman Act (Clayton Act, Section 2), § 4:1

Sherman Act

Section 1, § 2:1

Section 2, § 3:1

SUBMARKETS

See **Relevant Markets** (this index)

SUMMARY JUDGMENT

Concerted action and, §§ 2:4, 9:15 Motions for, § 9:15

TERRITORIAL ALLOCATIONS

Horizontal non-price restraints and, § 2:13 Joint ventures and, § 2:22 Monopolizing conduct and, § 3:5 Per se versus rule-of-reason treatment, § 2:9 Vertical non-price restraints and,

TRADEMARKS

§ 2:14

Franchise tying, § 2:18
Horizontal cartels involving,
§ 2:13
Loint ventures to develop § 6

Joint ventures to develop, § 2:22 Market power and, §§ 2:10, 3:4 Tying "economic power" and, § 2:18

Vertical nonprice restraints involving, § 2:14

Vertical price fixing involving, § 2:12

TRADE OR COMMERCE

Versus "non-commercial" activities outside Sherman Act, §§ 2:10, 3:3

TREBLE DAMAGES

Generally, § 9:25

TYING

Generally, §§ 2:18, 5:4
Bundled discounts and, § 2:18
"Contract tying" versus economic tying, § 2:18
De facto tying, § 2:18
Defenses, §§ 2:18, 5:4
Differential pricing and, § 2:18
"Full-line forcing" versus, § 2:18
Involving commodities only, § 5:4
Monopolizing conduct and, § 3:5
Per se tying, §§ 2:18, 5:4
Rule of reason tying, § 2:18

UNFAIR COMPETITION

FTC Act, Section 5 and, § 7:2

UNFAIR COMPETITION —Cont'd

Monopolizing conduct and, §§ 2:21, 3:5

Pick-Barth "unfair competition" conspiracies and, § 2:21

Rule of reason and, § 2:10

UNILATERAL CONDUCT

Colgate doctrine, §§ 2:4, 2:12 Concerted action versus, §§ 2:4 to 2:7, 2:12

Intra-enterprise joint action, § 2:7
Parallel responses to pricing and other conduct of competitors, §§ 2:4, 2:6

Price suggestions, § 2:12
Refusals to deal, §§ 2:4, 2:16, 3:5
Responding to dealer complaints, § 2:4

UNIONS

See **Labor Exemption** (this index)

VENUE

Litigation procedure, § 9:10

VERDICTS

Directed verdict, § 9:16
Judgment as a matter of law,
§ 9:16
Judgment n.o.v., § 9:16

VERTICAL AND CONGLOMERATE MERGERS

See Clayton Act, Section 7 and 8 (this index)

VERTICAL BOYCOTTS

See **Group Boycotts** (this index)

VERTICAL NON-PRICE RESTRAINTS

Areas of primary responsibility, § 2:14

Customer restraints, § 2:14

Dual distribution situations, § 2:14

Hybrid horizontal-vertical
nonprice restraints, § 2:14

Location restraints, § 2:14
Other vertical non-price restraints,
§ 2:14

Rule of reason, generally, § 2:10 Territorial restraints, § 2:14

VERTICAL PRICE FIXING

Generally, § 2:12

Agents versus resellers, § 2:12 Cooperative advertising and national account programs, § 2:12

Hybrid horizontal-vertical price restraints, § 2:12

Price "suggestions" versus price "maintenance," § 2:12

State laws, § 2:12

Vertical maximum price fixing, § 2:12

Vertical minimum price fixing, § 2:12

WAIVERS

Arbitration provisions, § 9:23 Class actions and, § 9:22

WEBB-POMERENE ACT

Export trade exemptions, § 8:5

WORK-PRODUCT

Discovery, attorney work-product and other work-product, § 9:21