CONTENTS

Foreword.................................................................................................................................vi
Preface ......................................................................................................................................vii

Chapter I
Overview.................................................................................................................................1
A. Competition As Public Policy............................................................................................1
B. The Symposium ..................................................................................................................2
  1. Introduction: The Importance of Competition in Creating an
     Economy Driven by Consumer Choice...........................................................................3
  2. Historical Overview of the Role of Competition in Public
     Policy in the United States ...............................................................................................4
  3. Deregulation and the Legacy Costs of Market Regulation..............................................7
  4. The Financial Crisis: Market Failure or Regulatory Failure? .........................................8
  5. Health Care: Capable of a Market-based Solution or an
     Arena in Which Competition Cannot Work? ....................................................................11
  6. State Aid: Can Markets Recover from Intervention by the
     Visible Hand? .....................................................................................................................14
C. Continuing the Debate.......................................................................................................15

Chapter II
Competition Policy in Distressed Industries: Keynote Remarks .... 17
A. Introduction ........................................................................................................................17
B. Lessons from the Great Depression .................................................................................21
C. Economic Analysis of Distressed Industries and Companies ....................................26
  1. General Principles ..........................................................................................................26
  2. Transitory Distress vs. Longer Term Decline .................................................................28
  3. Financial Distress vs. Underlying Lack of Competitiveness .........................................28
  4. Immediate Impact vs. Long-Term Industry Structure ..................................................29
D. The Financial Sector .........................................................................................................29
  1. Implications for Antitrust Enforcement .........................................................................30
2. Alleviating Financial Stress by Reducing Competition ..........30
3. “Ruinous Competition” ..............................................32
4. The Failing Firm Defense ........................................33
5. Exclusionary Conduct .............................................35
E. Conclusions ..........................................................35

Chapter III
Who Started It? Who Stopped It?: A Modest Proposal to
Reverse the Rankings of Type 1 and Type 2 Errors in Predation
Jurisprudence ..........................................................37

Chapter IV
Regulatory Change Then and Now ..................................47
A. Forces Producing Recent Regulatory Change ....................48
B. How Does the Financial Services Industry Fit into This History? ....51
C. Has the Age of Deregulation Ended? ............................59

Chapter V
Financial Regulation and the Current Crisis: A Guide for
Antitrust ..........................................................65
A. Introduction ..........................................................65
B. Finance and Financial Regulation ..................................67
  1. Understanding Finance .........................................67
     a. Finance Is Special .........................................67
     b. Financial Intermediaries, Financial Facilitators ..........68
     c. Securitization ..............................................69
  2. Financial Regulation ............................................71
     a. Market Failure .............................................72
     b. Government Failure .......................................74
  3. Types of Financial Regulation ..................................75
C. The Special Place of Housing Policy ..............................77
  1. An Overview .....................................................77
  2. Fannie Mae and Freddie Mac ....................................79
  3. The Community Reinvestment Act ..............................81
D. Financial Regulation versus Competition: A Selective History ....83
  1. Banking Regulation ............................................83
B. Antitrust as a (Mostly Unsuccessful) Antidote to Fragmentation 128
C. Aftermath: Concentration and Fragmentation in a Disintermediated Market 135
D. Consumer Driven Health Care: A Flawed Vehicle for Change 140
E. Conclusion 144

Chapter VII
The Visible Hand: Government Hand-Outs and Hand-ups 145
A. The Issue: How Do Courts and Competition Authorities Regulate Government Intervention? 145
B. The EU Compared with Other International Organizations 146
C. The EU’s Ability to Regulate Government Intervention 147
D. The State Aid Notification Process 148
E. Why Has the EU Developed Such a Sophisticated Regime for Monitoring and Enforcing State Aid Law? 149
F. What is State Aid? 150
G. Some Specific Forms of Aid 153
1. State Shareholdings and Capital Injections 153
2. State Guarantees 156
H. Automatic Authorization of Certain State Aid 157
I. State Aid Which May Be Approved Following Notification to the European Commission 160
1. The Commission’s Application of Article 87(3) 161
2. Aid to Areas with Abnormally Low Living Standards under Article 87(3)(a) 161
3. Aid to Promote the Execution of an Important Project of Common European Interest or to Remedy a Serious Disturbance in the Economy of a Member State under Article 87(3)(b) 163
4. Aid to Facilitate the Development of Certain Economic Activities under Article 87(3)(c) 166
5. Operating Aid 167
6. Rescue and Restructuring Aid 168
J. A Bird’s Eye View—A Statistical Analysis of EU Cases 171
K. Some Thoughts on Transatlantic Consistency 172
Chapter VIII
Where We’ve Been (Panel Transcript) ............................................. 175

Chapter IX
Case Studies: Electricity (Panel Transcript) ...................................... 209

Chapter X
Financial Issues (Panel Transcript) .................................................. 241

Chapter XI
The Role of Competition in the Market for Health Care (Panel Transcript) ................................................................. 281

Chapter XII
The Visible Hand: Government Hand-outs and Hand-ups (Panel Transcript) ................................................................. 315