This book offers an original interpretation of the case law on exclusionary abuses under Article 82 EC (now Article 102 TFEU, according to the numbering introduced by the Treaty of Lisbon), and it identifies the various factors that have shaped the application of this provision through its history. The book provides an in-depth analysis of the European Commission's Guidance on enforcement priorities under Article 82 and it makes a provocative proposal for further modernisation of the analysis of exclusionary abuses by recasting the prohibition of abuse of dominance as a norm which deals only with unilateral conduct. The first part of the book reconsiders fundamental legal and economic concepts underpinning the assessment of exclusionary abuses and identifies the difficulties posed by the principal forms of abusive practices (refusals to deal, predatory pricing, rebates and tying). The EU case law is compared with the US experience under Section 2 of the Sherman Act. The second part of the book explores solutions, based on the premise that the reform of Article 82 (now Article 102 TFEU) should be in line with the modernisation of Article 81 (now Article 101 TFEU) and the EU merger control rules. The last chapter demonstrates the gradual convergence of the application of Articles 81 and 82 in the area of vertical restraints. It points towards a redefined division of labour between these two provisions with a view to ensuring efficient enforcement, better protection of consumer interests, and clearer incentives for dominant firms to invest in desirable commercial practices. The book will be of interest to students and practitioners of EU competition law, and to those in other jurisdictions where the application of competition law to practices of dominant firms is controversial.
exclusionary, rather than merely a form of vigorous competition, can be difficult to discern: the means of illicit exclusion, like the means of legitimate competition, are myriad. The challenge for an antitrust court lies in stating a general rule for distinguishing between exclusionary acts, which reduce social welfare, and competitive acts, which increase it. – United States v Microsoft, 253 F.3d34 (D.C. Cir. 2001). • Aim 1 - accuracy.