

## Book Review

# Antitrust Lessons for India

Vinod Dhall, editor

**Competition Law Today: Concepts, Issues, and the Law in Practice**

Oxford University Press India • 2007

### Reviewed by Ronald W. Davis

In the Spring 2007 issue of ANTITRUST magazine, Professor Eleanor Fox wrote about “India: The Long Road to a Full-Function Competition Law,” and Vinod Dhall, Member of the Competition Commission of India and editor of the volume under review, wrote about “Competition Law in India,” summarizing India’s Competition Act of 2002.<sup>1</sup> The (relatively) new statute is intended to replace an earlier enactment that addressed the monopoly problem by, among other things, requiring bureaucratic approval for large firms to expand. By contrast, the new law deals with anti-competitive agreements, abuse of dominant position, and business combinations in more familiar ways and will raise far fewer eyebrows among the worldwide antitrust community.<sup>2</sup>

Despite the modernity of the new substantive provisions, the long, long road that Professor Fox described is still awinding, as underlying ideological and political conflicts continue to promote institutional inertia and delay the implementation of the substantive provisions of the new Competition Act. In this context, while Mr. Dhall’s new book, *Competition Law Today: Concepts Issues, and the Law in Practice*,<sup>3</sup> has many features of interest to international readers, one gleans that among its major objectives must be to inform Indian decision makers and opinion leaders about how competition law works in a variety of other jurisdictions and thereby to encourage a movement in India toward international best practices—in short, antitrust benchmarking.

The work’s twenty-five chapters—all, apparently, prepared expressly for this book—are written by experts with superlative credentials, including senior enforcement officials, professors, and competition lawyers. Some will be familiar to American readers: Valentine Korah, Eleanor Fox, and Stephen Calkins, for example—the last of whom would surely be my number one pick to cover “Competition Law in the United States of America” in only twenty-four pages.

Part I features ten chapters on the major substantive and policy issues of world competition law. The work opens with an overview, written by the editor, on “Key Concepts in Competition Law,” which packs a surprising amount of information into thirty-five pages, including a number of use-

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<sup>1</sup> See Eleanor M. Fox, *India: The Long Road to a Full-Function Competition Law*, ANTITRUST, Spring 2007, at 72; Vinod Dhall, *Competition Law in India*, ANTITRUST, Spring 2007, at 73. For a more detailed account of the old and new Indian statutes, see T. RAMAPPA, *COMPETITION LAW IN INDIA* (2006).

<sup>2</sup> More surprising is a 2007 amendment on premerger notification that reads like Hart-Scott-Rodino on steroids, and has evoked carefully phrased but pointed comment. See Joint Comments of the American Bar Association’s Section of Antitrust Law, Section of Business Law and Section of International Law on Implementing Regulations for and Amendments to the Merger Control Provisions of India’s Competition (Amendment) Act, 2007 (Nov. 2007), available at <http://www.abanet.org/antitrust/at-comments/2007/11-07/Comments-IndianCompetition.pdf>.

<sup>3</sup> *COMPETITION LAW TODAY: CONCEPTS, ISSUES, AND THE LAW IN PRACTICE* (Vinod Dhall ed., 2007).

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ful insights on the relevance of competition law for developing countries. In the next chapter Richard Whish's discusses the law of cartels and anticompetitive agreements, focusing on areas of agreement, and debate, in respect of cartel enforcement. Mr. Whish is careful to place the subject in its historical context—for example, the “Constitution of Zeno of AD 483 punished price fixing in relation to clothes, fishes, sea urchins, and other goods with perpetual exile, usually to Britain.”<sup>4</sup> The chapter on cartels is complemented by another on leniency programs, authored by Paul Crampton and Graham Reynolds.

In keeping with the analytical difficulty and controversy surrounding issues of monopoly and dominance, Robert Anderson and Alberto Heimler lay out the issues in some detail, focusing on the EU and the United States. Writing on merger control, Alan Goldberg offers a very succinct international comparison of substantive and procedural issues, with many examples from Australia. Valentine Korah writes lucidly on the IP/competition law intersection, with particular reference to India.

The chapter by R. Shyam Khemani on antitrust exemptions and exceptions begins with an international comparison of competition law exemptions so detailed that one despairs of finding common threads. Then, when hope is almost lost, the author pulls it together by summarizing the rationales for competition law exceptions (balancing unequal bargaining power, reducing risk and uncertainty, etc), and concludes with six policy recommendations. Philip Lowe and Geraldine Emberger offer a meaty treatment of competition of competition advocacy by enforcement agencies, Alan Fish addresses competition and regulation, and Lennart Göranson offers up some very provocative thoughts on what success for a competition authority looks like.

Eleanor Fox concludes part I's overview of substantive and procedural issues with a chapter on “World Competition Law—Conflicts, Convergence, Cooperation,” elaborating on “negative comity” and its limitations as a means of harmonization; the need for global solutions to global problems: “The whole is not the sum of the national-interest parts,”<sup>5</sup> she declares. Professor Fox's chapter surveys bilateral and multilateral cooperation agreements, and describes in some details her views on the question of global antitrust convergence.

Part II has eight chapters describing the competition regimes of as many jurisdictions. The treatment of this topic cannot be described as comprehensive or encyclopedic, because if eight are included, more than ninety—notably including Canada and Japan—are omitted. One may infer, I think, that the editor's purpose is not to provide a detailed handbook for the international antitrust practitioner, but rather to give the reader a feel for the common factors in 21st century antitrust by looking at representative jurisdictions. To that end, each chapter describes the history and background of the jurisdiction it addresses, as well as its substantive and procedural law, but the style and focus differ from chapter to chapter.

Sitesh Bhojani provides an extended discussion of jurisprudential issues and a summary of leading cases in Australia. Michael J. Reynolds, writing on the EC, is particularly strong in his discussion of current modernization initiatives. The chapter on Germany, authored by Ulf Böge, features a meaty discussion of cartel enforcement, dominance, and mergers, with illustrative case examples.

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<sup>4</sup> *Id.* at 41.

<sup>5</sup> *Id.* at 231.

In Alberto Pérez Motta's chapter on Mexico we learn—via a quote from a report from the Organisation for Economic Co-Operation and Development (OECD)<sup>6</sup>—that the Mexican statute's "elegant organisation and clear conceptualisation reveal its origin as a product of technical expertise, rather than populist adventurism or political compromise."<sup>7</sup> Despite this observation by the OECD, evidently intended as a compliment, the author provides a candid assessment of the pros and cons of the antitrust regime in Mexico. As with the Australia chapter, he also gives case summaries.

Writing on South Africa, David Lewis gives a particularly interesting account of how antitrust helped that country achieve liberation from the economic effects of apartheid and protectionism. He also provides an extended discussion of the advisability of opposing anticompetitive mergers. The following chapter, on Korea, by Youngjin Jung, provides a rather dramatic contrast: here a central concern is not apartheid but rather a perceived need to place reins on the *chaebol* (conglomerates). The author explains how, in consequence, competition regulations are adopted—without definition and assessment of a relevant market—in order to keep financial capital separate from industrial capital and thus to avoid *chaebol* dominance of the national economy. The author sees a potential conflict between regulating *chaebol* and promoting efficiency through more traditional antitrust enforcement. Christopher Bellamy gives a straightforward summary of competition law in the UK, focusing on recent efforts to bring UK law into line with EC law. Part II concludes on a particularly high note, with Stephen Calkins's short and breathless but informative romp through U.S. antitrust history, procedure, and substance.

Part III addresses, in three chapters, economic and other policy considerations in connection with competition law—issues that, from an American perspective, it is surprising to see treated almost as an afterthought. Dando B. Cellini writes a short essay on the reasons for the increasing role of antitrust law around the world. Amit Bubna and Shubhashis Gangopadhyay treat "The Economics of Competition Law" in a well written but breathtakingly short thirteen pages. And Simon J. Evenett gives us an interesting chapter on the intersection of competition policy and industrial policy, with a number of practical suggestions on how competition agencies might usefully respond to industrial policy initiatives that reduce allocative efficiency (e.g., a proposed merger to monopoly for the purpose of creating a national champion).

Part IV, focusing on India, concludes the work. Amitabh Kumar provides historical perspective on "The Evolution of Competition Law in India." The final chapter is by the editor, Vinod Dhall, and provides extended treatment of the Competition Act of 2002, giving, among other things, comprehensive commentary on the sources for, and the construction of, the act's substantive provisions, commentary that will no doubt prove valuable to practitioners as and when those provisions become effective.

It is to be expected—and certainly to be hoped—that this work will prove highly useful in India, as that country completes the work of antitrust modernization. Moreover, as noted above, it will likewise be interesting and useful to many in the antitrust community outside India, particularly to those involved in planning and implementing new antitrust regimes around the world. ●

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<sup>6</sup> OECD, *Competition Law and Policy in Mexico: An OECD Peer Review* 11 (2004), available at <http://www.oecd.org/dataoecd/57/9/31430869.pdf>.

<sup>7</sup> DHALL, *supra* note 3, at 327.