BOOK REVIEW

Competition Law and Practice – A review of major jurisdictions

Editor: Marjorie Holmes, partner, Reed Smith
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As Philip Lowe notes in the foreword to this book, in less than 20 years, the number of countries with competition regimes has grown from less than 30 to more than 100. This is in no small part due to the increased globalisation of trade, as well as the key political changes that have taken place over that period. Editor Marjorie Holmes, goes further, describing the plethora of competition laws as being tools in the development of capitalism. Could it be said, on the 20th anniversary of the fall of the Berlin Wall, that the invisible hand helping to tear it down was competition law? Maybe, but that debate is for another day and in another book.

The aim of *Competition Law and Practice – A review of major jurisdictions* is clear – to describe the key features of competition law in the various jurisdictions chosen and thereby to alert the reader to key differences between them. This identification of differences is necessary because, as Lowe points out, despite ever-closer coordination between countries and agencies on issues of competition law, differences – sometimes substantial – remain and it is critical that professional advisers are aware of them. This book fulfils that task substantially.

The book covers Brazil, China, Europe, India, Korea, Mexico, Russia and the United States. The appendix is a very useful summary of the contents of those chapters under seven subtitles: relevant legislation, competition authorities, fines for breach of competition rules, merger thresholds, criminal sanctions, leniency and time limits for bringing a damages claim. The appendix is an extremely useful synopsis and should be the first port of call for any reader. From it, one can see at a glance the difference, for example, between the relative simplicity of the EU policy on fines – up to 10 per cent of worldwide turnover of the undertakings concerned – to the specificity of the Mexican approach which calls for fines of 1.5 million times the fixed minimum daily wage in the Federal District for an absolute monopolistic practice. However, the main take-home thought from a perusal of the appendix is how similar the various jurisdictions are in their treatment of competition. All identify price fixing as a hard-core restriction. All allow for exemptions or exclusions – interestingly known as "soft core" in Korea. All view vertical restraints more favourably than horizontal ones. All provide for fines for breach of their competition laws and all regulate mergers.

Once one moves away from the appendix into the detail of the individual jurisdictions, the country or area authors set out the specifics with admirable clarity. From the authors' biographies, it is clear that they are each more than well qualified to opine on their subjects. As someone who has been involved in competition law litigation for more than 20 years, I thought that I was aware of most issues on the subject. However, this book showed me how much there was out there. The following non-exhaustive nuggets were found there.

In Brazil, one learns that the first competition law was enacted in 1962, which is before any meaningful decisions had been taken by the European Court on EU competition law. However, the Brazilian authors note almost ruefully that enforcement of that 1962 law was almost non-existent until the 1980s. If you want to be part of the Administrative Council for Economic Defence, which enforces Brazil's competition law, then you must be over 30 years of age.

In China, the Anti-Monopoly Law only came into effect on 1 August 2008. Accordingly, as the Chinese authors note, there have only been two cases to date, both brought on 1 August 2008. Interestingly, the jurisdiction for the private enforcement of damages actions is the division dealing with intellectual property cases. This is not dissimilar to the Chancery Division's jurisdiction of such matters in England and Wales.

In what is entitled "Europe", but which could be more properly described as the European Union, the extremely detailed chapter is a veritable feast for both beginners and the cognoscenti. Unfortunately, certain key events, such as the recent decision of the European Commission to ditch its directive on damages actions in the member states for breach of the EU competition laws, took place after the book was published.

In India, one learns that to be chairperson of the Appellate Tribunal, which hears appeals from the Competition Commission, one has to be either a judge of the Supreme Court of India or a chief justice of one of the High Courts of India – criteria which demonstrate the importance of the position. However, as with some of the other jurisdictions covered in this book, Indian competition law is, in the words of its authors in "a preparatory-nascent phase". Given that this is so in other jurisdictions, Marjorie Holmes is to be encouraged to bring out a new edition in a few years time to encapsulate the new developments which will undoubtedly have arisen once this preparatory-nascent phase has been completed.

The Russian Federation, one learns, has antitrust arrangements with a number of other jurisdictions, including the EU, which is to be expected, as well as with France, which is slightly more surprising. Apparently, Russian law does not recognise the term "cartels", which might be thought to be a boon to cartelists, until one reads on to find that the law does recognise the concepts of agreements limiting competition and concerted actions. In one case involving concerted action, expert evidence from Moscow State University was adduced to demonstrate that the probability of three telecoms companies simultaneously deciding to increase their tariffs being a pure coincidence was between 0.0003 per cent and 0.0012 per cent, thereby demonstrating the power of probability.

Finally, in the US, one learns that after some 100 years of court interpretation of the key competition statutes, US antitrust law is one of the most "facially simplistic but at the same time practically complex body of US jurisprudence". We are therefore lucky indeed to have an extremely clear exposition of that complex body of jurisprudence presented in this chapter.

In 1642, King Charles I stated in response to the 19 propositions put to him by parliament, that *nolumus leges Angliae mutari* – "we will not have the laws of England changed". Charles eventually showed with his life that that nostrum was no longer true. Nearly 400 years later, we can see through the most interesting and useful book that the laws of competition throughout the world have changed radically. The authors and the editor are to be congratulated on the production of this must-have tome for competition practitioners. ■