The Future Development of Competition Framework

Edited by
Tzong-Leh Hwang
and
Chiyuan Chen

KLUWER LAW INTERNATIONAL
# Table of Contents

Preface v  
About the Authors xviii  

## Chapter 1 Introduction

**Internationalization of Competition Laws: Levels of Diversities**  
*Ulrich Immenga*

1. The Issue 3  
2. The ICN and Divergences in the Notification of Mergers 4  
3. Levels of Divergences 4  
4. Rules Aimed against Clear Anticompetitive Behavior 5  
5. Rules Resulting from Specific Views of Competition Policy 5  
6. Rules Which Reflect Conflicting Policies, in Particular Political Interests 6  
7. Rules of Enforcement Policies and Sanctions 7  
8. Rules Related to National Cultures and Traditions 8  
9. Conclusions 9  
10. References 10  

## Chapter 2 Speeches by Representatives of Foreign Competition Authorities

**Competition, Trade and Development Before and After Cancun**  
*Frédéric Jenny*

1. Cases of International Cartels 13  
   1.1 Cement in Egypt 13  
   1.2 The Aluminum cartel 15  
   1.3 The heavy electrical equipment cartel 17  
   1.4 How can Egypt deal with these cases 17  
2. The Importance of Transnational Anti-competitive Practices for Developing Countries 18  
3. Two Approaches to the Problem of Externalities Due to International Anti-competitive Practices 20  
4. Possible Remedies 22  
5. The State of Play before Cancun 26  
6. The Cancun Ministerial Conference 29  
7. Conclusion 33  

**Regional Cooperation Between Competition Authorities**  
*Ulf Böge*

1. Problematics 37
# Table of Contents

2. Forms of cooperation 38  
  2.1 Institutional Cooperation 39  
  2.2 Case-specific Cooperation 39  
3. Regional Cooperation as a Catalyst 40  
4. Closing Remark 41  

**Canadian Perspectives on International Competition Cooperation**  
*Sally Southey*  
1. Introduction 43  
2. Organization for Economic Cooperation and Development (OECD) 44  
3. The International Competition Network (ICN) 45  
4. Cooperation through Bilateral Arrangements 46  
5. Merger Review 47  
6. Anti-Cartel Activity 47  
7. Conclusion 48  

**Current Development of Competition Law and Policy in Indonesia**  
*Pande Radja Silalahi*  
1. Introduction 49  
2. Trend in Competition Law and Policy in Indonesia 50  
3. Implementation of Competition Law 54  
4. Conclusion 56  
5. References 57  

**Chapter 3 Globalization and the Development of Competition Framework**  

**Globalization and the Competition Analytical Framework: Some Mexican Experiences**  
*Pascual García Alba*  
2. Globalization and the Competition Analytical Framework 62  
3. General Characteristics of the Relevant Market 65  
  3.1 Method used by some competition authorities to determine the relevant market 66  
  3.2 An alternative method to determine relevant markets 68  
  3.3 Geographical dimension of the relevant market 70  
4. Concentration Analysis (Concentration Indexes) 71  
  4.1 Limitations of the concentration indexes 71  
  4.2 Market shares for the computation of concentration indexes 72  
  4.3 Concentration indexes used by the Mexican authority 72  
    4.3.1 The Herfindahl index 73  
    4.3.2 The Dominance index 73  
  4.4 Incomplete information 73  
  4.5 Index thresholds for merger analyses 74  
  4.6 Exceptions to the thresholds 74  
  4.7 Advantages of the dominance index 74  
5. Final Remark 75
Competition Policy as Welfare-Enhancing Complement to Trade Liberalization: A United States Perspective  
*Alden F. Abbott*

1. Introduction 77  
2. Antitrust and Trade Policy 78  
3. International Antitrust: Growth and Harmonization 80  
4. Conclusion 88

Globalization and Development of Competition Policy in the Russian Federation  
*Alexander B. Letin*

Refreshed Approaches to the Development of Global Competition Framework  
*Changfa Lo*

1. Introduction 93  
2. Some Background of the Efforts toward Establishing a Multilateral Competition Framework under the WTO 94  
3. Previous Approaches and Thoughts on the Interactions between Trade and Competition Policy 96  
4. The Whys and Wherefores for the Differences 96  
5. Basic Ideas of Alternative Approaches 99  
5.1 To consider giving up the idea of a single competition agreement 99  
5.2 To cope only with trade related aspect of competition matters 101  
5.3 To promote some approaches and to establish “Understandings” or “Decisions” in some areas 101  
5.3.1 To continue sectoral approach used under the GATS 101  
5.3.2 To consider soft rules 102  
5.3.3 To expand the prevention of abuse of monopolies under the GATS to GATT and TRIPS Agreement 102  
5.3.4 To include positive comity provisions under the GATT and TRIPS Agreement 104  
5.3.5 To provide incentives through authorizations 105  
6. Concluding Remarks 106

Chapter 4 Competition Framework for Technological Innovation  
*John Martin*

1. Introduction 109  
2. Intellectual Property Rights and Competition Law 110  
3. Australian Intellectual Property Policy Issues 111  
3.1 Australia Competition Law and the Role of the ACCC 112  
3.1.1. Intellectual Property Rights and the TPA 112  
3.2 Review of Australian Intellectual Property and Competition Law 113  
3.3 Refining the Exemption Provisions Section 51(3) of the Trade Practices Act 114
Table of Contents

3.4 Copyright Collecting Societies 115
4. Parallel Imports 116
   4.1 Changes to the Law 117
   4.2 Parallel importing of sound recordings 117
      4.2.1 Court cases 117
      4.2.2 Price surveys 119
   4.3 Parallel imports of books and computer software 120
      4.3.1 Books 121
      4.3.2 Computer software 122
   4.4 Regional playback control systems 122
      4.4.1 Court case 123
5. Conclusions 124

Appendix B – Australasian Performing Rights Association 128

Patents and Standards

Christopher Heath

1. Introduction 131
2. Standards, Standard Setting and Competition 132
   2.1 Standards 132
   2.2 The effect of standards 132
   2.3 Standard Setting Organizations (SSOs) 133
   2.4 Standard Setting 133
3. Patents and Competition 134
   3.1 Patents 134
   3.2 The relationship between intellectual property and antitrust today 135
   4.1 Conduct by SSOs 138
   4.2 Conduct by Patentees 141
5. Future Course of Action 144
   5.1 For SSOs 144
   5.2 For competition authorities 145
   5.3 For the legislature 145

Policy Issues in Efficient Collaboration Through a Patent Pool

Sadao Nagaoka

Summary 147

1. Introduction 147
2. Major Structural Features of Recent Patent Pools 148
4. Constraints on Efficient Collaboration in Complementary Patents 150
5. Policy Issues for Efficient Collaboration 152
   5.1 Ground for policy interventions 152
   5.2 Standard policy 153
   5.3 Competition and IPR policy toward an outsider 153
6. Reference 154
## A Discussion of the Relationship Between the Patent Law and the Fair Trade Law in Taiwan with a Review of the Philips CD-R Decisions

*Ming-Yan Shieh*

1. Introduction 155
2. Relevant Regulations in Taiwan 156
   2.1 The Exception under Article 45 of Fair Trade Law 156
   2.2 Taiwan's Rules for Review of Technology Licensing Arrangement Cases by the Fair Trade Commission 157
      2.2.1 Examples of provisions which are NOT in violation of the Law 157
      2.2.2 Examples of provisions which ARE in violation of the Law 159
      2.2.3 Examples of provisions which MAY be in violation of the Law 160
3. Philips Electronics et al 161
   3.1 Facts 161
   3.2 Taiwan's FTC Philips decisions 161
   3.3 Relevant issues 162
4. Relevant Markets for CD-R Technologies 163
   4.1 Goods markets, technology markets, and innovation markets 163
   4.2 Markets for CD-R 163
5. The Patent Pool as a Special Form of Patent Licensing 164
6. The Treatment of Patent Pools under the Fair Trade Law 165
   6.1 The U.S. Regulations Concerning Patent Pools 165
   6.2 Patent pools and market power 166
   6.3 The Effect of closed patent pools on competition 167
   6.4 Patent pools involving technologies concerning standard specifications and the effect on competition 167
7. Patent Pools and Concerted Actions 168
   7.1 Concerted actions under Taiwan's Fair Trade Law 169
   7.2 Determining whether enterprises are in horizontal competitive relationship with one another 170
   7.3 Concerted actions restricting business activities 172
   8.1 Determining monopoly status 173
   8.2 Abuse of market power 174
9. Conclusion 174

## Technological Innovation, the Knowledge-Based Economy and Competition Policy

*George Jyh-yih Hsu*

1. Introduction 177
2. Characteristics of a Knowledge-based Economy's Business Development and Market Competition 178
   2.1 Increase in enterprise size 179
   2.2 Collaboration among enterprises 179
   2.3 Virtual enterprises 180
Table of Contents

2.4 Shortening the business and product life-span cycles 180
2.5 Fuzzy and boundless market 181

3. Challenges and Responses to Competition Policy 181
3.1 Monopolies 181
3.2 Mergers 184
3.3 Concerted actions 187
3.4 Unfair competition 190

4. Corresponding Actions of the Taiwan Fair Trade Commission in the Era of the Knowledge-Based Economy 192
4.1 Background to the Taiwan Fair Trade Commission 192
4.2 Carrying out the “Building a Fair Competitive Environment for the Knowledge-Based Economy” project 194
4.3 Reform of merger controls to enhance enterprise competitiveness 195
4.4 Strengthening cooperation with related institutions to protect intellectual property 198
4.5 Promotion of the concept of fair trade to establish the culture of competition 198

5. Conclusion 199
6. References 201

Chapter 5 Competition Framework for Financial Reform 203

Korea’s Competition Framework in the Financial Industry 205
Nam-Kee Lee

1. Introduction 205
2. Progress of the Korean Financial Industry 206
   2.1 Growth-oriented Financial System 206
   2.2 Financial deregulation 207
   2.3 Structural reform 208
3. Applying the Competition Law in the Financial Sector 208
   3.1 Expanding the application of the competition law 208
   3.2 Competition law enforcement in the financial sector 210
4. M&As in Banking Industry 212
   4.1 Situation 212
   4.2 Procedure of M&A notification and review 213
   4.3 Investigation of the bank M&As 214
      4.3.1 Definition of the relevant market 214
      4.3.2 Analyzing the adverse competitive effects 216
      4.3.3 Efficiency 219
5. Conclusion 220
6. References 220

Taiwan’s Financial Reforms and Competition 223
Len-yu Liu

1. Introduction 223
2. Analysis of Major Financial Issues in Taiwan 224
   2.1 Over competition resulting in low market shares 224
   2.2 Less profit due to increased market competition 225
Table of Contents

2.3 Poor general economic climate affects credits and asset quality 225
2.4 Rise of financial groups poses challenges to financial supervision 225

3. Financial Reform Legislation 226
3.1 Formulation of the Law Governing Merger of Financial Institutions 226
3.2 Promulgation of the Financial Holding Company Law 228

4. Issues Relating to Competition Law 229
4.1 Principles governing threshold and review of mergers of Financial Institutions in Taiwan 229
4.2 Financial Holding Companies and the filing for merger 231
4.3 Confidentiality measures and disclosure of trade information 231
4.4 Regulations on cross selling 232
4.5 Issues on Financial innovation and tie-in 233
   4.5.1 Money management account (MMA) 233
   4.5.2 Trust and insurance funds 234
   4.5.3 Are the MMA and trust insurance funds tie-ins prohibited by the Fair Trade Law? 235
   4.5.4 Establishing a fair competition environment between financial subsidiaries under the financial holding company (FHC) structure and the non-FHCs structured financial institutions 237

5. Conclusion 238

Chapter 6 Competition Framework for Developing Economies and Technical Assistance 239
A Competition Framework for Developing Economies and Technical Assistance 241
Bernard J. Phillips

1. Introduction 241
2. Why OECD Countries are Embracing Increased Competition and More Efficient and Flexible Regulation 242
3. Competition and Efficiency as a Coherent Framework for All Economic and Regulatory Policy Making 247
4. Striking the Right Balance between Competition and Regulation 248
   4.1 General suggestions 248
   4.2 Getting the right structure 249
   4.3 Establishing the right rules 249
   4.4 Creating the right institutions 250
5. Building Capacity to Pursue a Strong Competition Policy 252
   5.1 Building a competition culture 252
   5.2 Creating an effective competition law enforcement regime 253
   5.3 Cooperation and capacity building 254
6. Conclusion 255

Appendix A-OECD Policy Recommendations on Regulatory Reform 255
Appendix B-APEC Principles to Enhance Competition and Regulatory Reform 258

xiii
Table of Contents

Reconciling Competition Policy with Development Policies:
The Case of Malaysia 261
Lee Kam Swee

1. Introduction 261
2. Reconciling Competition Policy and Development Policies 262
3. Characteristics of the Malaysian Economy 263
   3.1 Small economy 263
   3.2 Regional Separation and disparity 263
   3.3 Open economy 263
   3.4 Market structure 264
4. Development Policies in Malaysia 264
   4.1 Industrial policy 264
   4.2 Trade policy 264
   4.3 Privatization policy 264
   4.4 Socio Economic Policy 265
5. Formulating A Competition Policy Framework for Malaysia 266
   5.1 Objectives of the Fair Trade Practices Policy 266
   5.2 Scope of the Fair Trade Practices Policy 266
   5.3 Content of the Fair Trade Practices Policy 266
   5.4 Institutions of the Fair Trade Practices Policy 267
6. Conclusions 268

Competition Law in Indonesia: Framework and Technical Assistance 269
Syamsul Maarif

1. Introduction 269
2. Framework 270
   2.1 Goals 270
   2.2 Coverage 270
   2.3 Market power and standard of violation 271
   2.4 Exceptions 271
   2.5 Agency: the KPPU 271
   2.6 The police and public prosecutor 272
   2.7 The court 272
   2.8 Time limit 272
3. Technical Assistance (TA) 273
4. Conclusion 275

Annex – Roundtable Discussion 277

Abbreviations 303
Table of Cases 307
Table of Treaties, Statutes, Codes and Laws 309