

INTERNATIONAL AND  
COMPARATIVE  
COMPETITION LAW

MAHER M. DABBAH

*Barrister; Director, Interdisciplinary Centre for Competition  
Law and Policy (ICC) Queen Mary University of London*



# CONTENTS

<i>Preface</i>	page xxi
<i>List of abbreviations</i>	xxiii
<i>Table of Cases</i>	xxvii
<i>Table of Statutes</i>	xxix
<i>Table of Regulations</i>	xxxii

<b>1. Introduction</b>	<b>1</b>
1. Geographical expansion and increase in significance of competition law	1
2. A notable trend so far	3
3. The competition law 'chain'	4
4. The lack of competition law	5
5. Is competition law really global?	7
6. The desirability of competition	8
7. The 'need' for competition law	10
8. Competition law <i>and</i> competition policy	12
9. Similarities between competition law regimes around the world	13
10. Differences between competition law regimes around the world	14
(A) 'Viewing' competition and 'understanding' competition law	16
(B) What is the title of the law?	17
(C) Enforcement	17
(D) Institutional approaches	18
(E) Comment on the differences	19

- |     |   |    |
|-----|---|----|
| 11. | The concept, idea and function of competition                                     | 20 |
|     | (A) Meaning of competition  | 20 |
|     | (B) Function of competition   | 21 |
|     | (C) Comments  | 26 |
| 12. | Competition law: concept, framework, goals, characteristics and nature            | 30 |
|     | (A) The 'concept' of competition law  | 30 |
|     | (B) Framework of competition law: common or typical provisions                    | 32 |
|     | (C) The goals of competition law  | 36 |
|     | (D) Characteristics of competition law  | 44 |
|     | (E) The interdisciplinary nature of competition law                               | 49 |
| 13. | Enforcement: actors, considerations, policy approaches and culture                | 51 |
|     | (A) Is policy design and formulation relevant?                                    | 52 |
|     | (B) Political perspective   | 54 |
|     | (C) Beneficial v. harmful intervention  | 55 |
|     | (D) The involvement of different actors   | 58 |
|     | (E) Protecting competitors  | 59 |
|     | (F) What is competition policy?   | 60 |
|     | (G) The importance of culture   | 62 |
| 14. | The boundaries of competition law   | 64 |
| 15. | Competition advocacy  | 65 |
|     | (A) Using competition advocacy  | 66 |
|     | (B) Is competition advocacy necessary?  | 66 |
|     | (C) Competition advocacy and enforcement  | 66 |
|     | (D) Establishing public awareness   | 68 |
| 16. | Market definition and economic analysis   | 70 |
|     | (A) The purpose of market definition  | 70 |
|     | (B) The increasing significance of market definition                              | 71 |
|     | (C) Basic principles of market definition   | 73 |
|     | (D) Market definition in practice   | 76 |
| 2.  | The internationalisation of competition law: concepts, ideas, options and players | 78 |
| 1.  | Attention given to the process  | 78 |

2. The what, why and how of internationalisation 79
  - (A) Meaning of internationalisation 79
  - (B) Why internationalise? 80
  - (C) How to internationalise? 82
3. The hurdles facing internationalisation 87
4. Sovereignty and the internationalisation of competition law 89
5. Globalisation and its relevance 92
  - (A) The meaning of globalisation 92
  - (B) Is globalisation a natural process? 93
  - (C) The pros and cons of globalisation 94
  - (D) The effects of globalisation on the field of competition law 95
6. The interaction between different disciplines 97
7. The different players: their role, contribution and perspectives 100
  - (A) The players 101
  - (B) Countries v. markets and countries v. multinational enterprises 111
  - (C) The need for comprehensive debate 118
- 3. The involvement of international bodies and organisations in the field of competition law and policy 119**
  1. The World Trade Organisation (WTO) 120
    - (A) General 120
    - (B) Functions 121
    - (C) Structure and committees 122
    - (D) Involvement in the field of competition law 123
  2. The Organisation for Economic Cooperation and Development (OECD) 130
    - (A) Scope of work 131
    - (B) Structure and committees 132
    - (C) Notable work in the field of competition law 135
  3. United Nations Conference on Trade and Development (UNCTAD) 141
    - (A) Functions 141

	(B) Structure	142	
	(C) Notable UNCTAD achievements	144	
4.	The International Competition Network (ICN)		149
	(A) General	149	
	(B) Functions	150	
	(C) Structure	150	
	(D) Success and notable projects	152	
5.	The World Bank	153	
	(A) Functions	153	
	(B) Structure	154	
	(C) Notable projects	154	
6.	Comments	154	
4.	<b>EU competition law regime</b>		159
	1. Building the EU competition law regime as a 'European' idea	160	
	2. The EU chapter on competition and relevant legislative framework	161	
	(A) Articles 101–109 TFEU	161	
	(B) Regulations	162	
	(C) General Treaties Articles	162	
	(D) Administrative guidance	163	
	3. The special characteristics of EU competition law		164
	4. The nature of EU competition law		166
	5. The institutional structure within EU competition law regime	167	
	(A) The European Commission	168	
	(B) The General Court of the EU	170	
	(C) The European Court of Justice	172	
	(D) Domestic courts	174	
	(E) National competition authorities	175	
	6. The relationship between EU and domestic competition laws	176	
	(A) The influence of EU competition law within the Union	176	
	(B) The years prior to modernisation: 1957–2004		177

(C)	The harmonisation with EU competition law	187
(D)	The modernisation era	192
7.	The significance and influence of the EU competition law regime beyond the single market	198
(A)	The doctrine of extraterritoriality	200
(B)	The bilateral strategy	201
(C)	Multilateral efforts	223
5.	<b>US competition law regime</b>	227
1.	Introduction	227
2.	A brief historical perspective	228
3.	A regime of 'contexts'	229
4.	The US federal legal system in brief	230
(A)	The legislative branch	231
(B)	The executive branch	231
(C)	The judicial branch	232
5.	US competition authorities	233
(A)	The Antitrust Division	233
(B)	The Federal Trade Commission	236
6.	US competition laws	237
(A)	The Sherman Act	238
(B)	The Clayton Act 1914	244
(C)	The Federal Trade Commission Act 1914	245
(D)	Robinson-Patman Act 1936	245
(E)	The National Cooperative Research Act of 1984	247
(F)	The Export Trading Company Act 1982	247
(G)	The Local Government Antitrust Act 1984	247
(H)	Hart-Scott-Rodino Antitrust Improvements Act 1976	247
(I)	Antitrust Criminal Penalty Enhancement and Reform Act 2004	248
(J)	Antitrust Procedures and Penalties Act 1974	248
(K)	Webb-Pomerene Act 1918	248
(L)	National Cooperative Research and Production Act 1993	248
(M)	Anti-dumping Act 1916	249
(N)	Wilson Tariff Act 1894	249
(O)	Tariff Act 1930	249

- 7. Economic 'context' and foundation in US competition law regime 250
  - (A) The Harvard school 251
  - (B) The Chicago school 253
  - (C) Comment 255
- 8. The 'other' context: the role of politics 256
- 9. Private enforcement 256
  - (A) Damages claims 258
  - (B) Injunctions 260
  - (C) Class actions 261
  - (D) Limitation period 263
- 10. International outlook 264
  - (A) Multilateralism 264
  - (B) Free trade agreements 266
  - (C) An integrated competition-trade approach 266
  - (D) The FTC's international programme 267
  - (E) Department of Commerce's contribution 268
- 11. Some recent developments 268
  - (A) The Antitrust Modernisation Commission 268
  - (B) The Obama Administration and the withdrawal of the 'Section 2 Report' 272
  - (C) Revising the Horizontal Merger Guidelines 273
- 6. Competition law and policy in developing countries 275**
  - 1. Introduction 275
    - (A) What is meant by 'developing countries'? 275
    - (B) An overview of this chapter 286
  - 2. The different 'aspects' of the topic 287
  - 3. The spread of competition law around the developing world 288
    - (A) The involvement of international bodies 292
    - (B) The involvement of major competition authorities 293
  - 4. The should/should not debate 295
    - (A) The arguments in favour 297
    - (B) Arguments against 304
    - (C) Comment 305

5. What would be the most suitable law or model for developing countries? 305
  - (A) Means and end debate 307
  - (B) Similarities in policy approach 307
6. The challenges facing developing countries 310
  - (A) The involvement of the government in the local economy 310
  - (B) Political factors 311
  - (C) Fixing institutional parameters 313
  - (D) Lack of sufficient awareness of competition 320
  - (E) Too much or too little competition? 320
  - (F) The unique formula of competition and non-competition considerations 321
  - (G) Manipulation at the hands of other countries and their firms 323
  - (H) The wording of the law 325
  - (I) Enforcement-specific challenges in an extraterritorial context 329
  - (J) Chances to enter into bilateral cooperation agreements 332
  - (K) Conflicts 332
  - (L) Self-erected challenges 333
7. The role of consumers 336
8. Developing countries and the process of internationalisation 337
9. Sectoral regulation 338
  - (A) General 339
  - (B) Some examples 342
10. Comments 361
  - (A) The trade policy arena 361
  - (B) Scope and content of the competition rules 362
  - (C) Institutional structure 363
  - (D) Capacity building and technical assistance 364
- 7. Regional competition law and policy 366**
  1. Setting the scene 367
  2. The Middle East 370
    - (A) The League of Arab States 371



- (B) The Agadir Agreement 376
- (C) The Cooperation Council of the Arab States of the Gulf (GCC) 377
- (D) Cooperation through the European Commission 378
- 3. Africa 380
  - (A) The Economic and Monetary Community of Central Africa (CEMAC) 381
  - (B) Common Market for Eastern and Southern Africa (COMESA) 382
  - (C) West African Economic and Monetary Union (UEMOA or WAEMU) 386
  - (D) Southern African Customs Union (SACU) 387
  - (E) East African Community (EAC) 389
  - (F) Southern African Development Community (SADC) 391
- 4. Asia (excluding the Middle East) 392
  - (A) Association of South East Asian Nations (ASEAN) 392
  - (B) South Asian Association for Regional Cooperation (SAARC) 395
  - (C) Asia-Pacific Economic Cooperation (APEC) 396
  - (D) Trans-Pacific Strategic Economic Partnership Agreement 397
- 5. The Americas and the Caribbean 397
  - (A) Southern Common Market (MERCOSUR) 397
  - (B) The Caribbean Community and Common Market (CARICOM) 399
  - (C) The Organisation of Eastern Caribbean States 402
  - (D) The North American Free Trade Agreement (NAFTA) 403
  - (E) Central America–Dominican Republic–United States Free Trade Agreement (CAFTA-DR) 404
  - (F) Latin American Free Trade Agreement 404
  - (G) The Andean Community 405
  - (H) Ibero-American Forum on the Protection of Competition 407
- 6. The Commonwealth of Independent States 407
- 7. Comments 409
  - (A) The high number of initiatives 409
  - (B) Harmonisation 410

- (C) Competition advocacy 410
  - (D) Division in competence 410
  - (E) Overlap in membership 411
  - (F) Copying the EU experience 412
  - (G) Lack of clear direction 413
  - (H) Capacity constraints 414
  - (I) Sub-regional cooperation 414
  - (J) Bilateral cooperation 415
  - (K) Why regional cooperation has not worked? 415
- 8. The unilateral option: extraterritorial assertion of jurisdiction 418**
- 1. Sovereignty and the principle of territoriality under public international law 419
    - (A) The traditional approach 419
    - (B) Mere assertion of jurisdiction v. enforcement 422
    - (C) The (in)adequacy of the traditional approach in areas of economic law 422
  - 2. The 'effects' doctrine 423
    - (A) General 423
    - (B) The justification 423
  - 3. The doctrines of 'implementation' and 'single economic entity' 426
  - 4. Extraterritoriality: some fundamental issues 426
    - (A) The question of definition 426
    - (B) The scenarios 427
    - (C) Sources of extraterritoriality 428
    - (D) Extraterritoriality and the internationalisation of competition law 429
    - (E) Is there a political dimension to extraterritoriality? 430
  - 5. Developments in the USA and the EU 432
    - (A) The American perspective 432
    - (B) The European Union perspective 452
    - (C) Comments on the EU and US perspectives 461
  - 6. Responses to extraterritoriality 469
    - (A) The three ways 471
    - (B) Assessing the responses 477

- 7. Comments 478
  - (A) Extraterritoriality as an act of aggression 479
  - (B) The role of courts 480
  - (C) Viable alternatives to extraterritoriality 485
  - (D) Extraterritoriality in most exceptional circumstances 487
  - (E) Abandoning treble damages 490
- 9. The bilateral option: cooperation between competition authorities 494**
  - 1. Bilateral cooperation 'through' extraterritoriality 494
  - 2. Meaning and types of bilateral cooperation 495
    - (A) Meaning of bilateral cooperation 495
    - (B) Types of bilateral cooperation 496
  - 3. Some case studies on bilateral cooperation agreements 501
    - (A) The EU-US positive comity cooperation 501
    - (B) The Australia-New Zealand 'closer' cooperation 505
    - (C) Canada-US cooperation 506
    - (D) UK-US cooperation 507
  - 4. The importance of bilateral cooperation 509
  - 5. Bilateral cooperation in practice 512
    - (A) Coordination of enforcement efforts 512
    - (B) Convergence 516
  - 6. Limitations, shortcomings and criticisms of bilateral cooperation agreements 517
    - (A) Use of confidential information 517
    - (B) Solving disputes 520
    - (C) The double illegality requirement 521
    - (D) Long-term nature of the bilateral cooperation strategy 521
    - (E) Confidence in comity 522
    - (F) Soft law nature of bilateral agreements 522
  - 7. Contribution to the internationalisation of competition law 522
  - 8. Assessing the status quo 523
    - (A) Fulfilling the objectives behind bilateral cooperation 523
    - (B) Extent of bilateral cooperation 524

- (C) Scope of bilateral cooperation 525
- (D) Existence of cooperation v. lack of cooperation 526
- 9. Cooperation and comity: a relationship of harmony? 527
- 10. Looking to the future: a policy perspective 528
  - (A) A centre of gravity 529
  - (B) Lack of knowledge 530
- 10. The multilateral option: cooperation through binding and non-binding commitments 541**
  - 1. Multilateralism through binding obligations 542
    - (A) Past developments 542
    - (B) Reaching the present 548
    - (C) Contemplating the future 549
    - (D) Comments 567
  - 2. Multilateralism through non-binding commitments 569
    - (A) Assessing the chances non-binding multilateralism 569
    - (B) The evolution of non-binding multilateralism so far 571
    - (C) Comments 577
- 11. Competition and trade policy 579**
  - 1. Overview 579
    - (A) Anticompetitive behaviour and its effect on the flows of international trade and investment 581
    - (B) The concepts of 'market access' and 'hindrances' 582
  - 2. The perspectives of competition and trade policies: differences 589
  - 3. Substitutability between competition policy and trade policy 591
  - 4. Consistencies between competition policy and trade policy 594

5. The different approaches under competition policy and trade policy	595
(A) Approaches under competition policy	595
(B) Approaches under trade policy	597
(B) Domestic trade laws	616
(C) Reflections	620
<i>Bibliography</i>	627
<i>Index</i>	653