

# INTERNATIONAL AND COMPARATIVE COMPETITION LAW

MAHER M. DABBAH

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



CAMBRIDGE  
UNIVERSITY PRESS

# 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>	1
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.	<b>The involvement of international bodies and organisations in the field of competition law and policy</b>	<b>119</b>
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
<b>6. Competition law and policy in developing countries</b>	<b>275</b>
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
<b>8.</b>	<b>The unilateral option: extraterritorial assertion of jurisdiction</b>	<b>418</b>
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.	<b>The bilateral option: cooperation between competition authorities</b>	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.	<b>The multilateral option: cooperation through binding and non-binding commitments</b>	<b>541</b>
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.	<b>Competition and trade policy</b>	<b>579</b>
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