



## Book Review

# Competition Law and the European Union

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**Richard Whish & David Bailey, *Competition Law*, Oxford University Press, New York, 2012; ISBN: 978-0-19-958655-4**

Adam Smith's *Wealth of Nations* is the first traceable event of the origin of competition law, wherein he refers to the metaphor of "the invisible hands." Earlier, in the Roman Empire, the business practices of market traders, guilds and governments had always been subjected to scrutiny, and sometimes faced severe sanctions. The *Lex Julia de Annona*, enacted around 50 BC, during Julius Caesar's time, to protect the corn trade, levied heavy fines on anyone directly, deliberately or insidiously, thus stopping supply ships. The most notable step in this direction was the Constitution of Zeno of 483 AD. Very soon, Justinian- 1 also introduced legislation to pay officials to manage state monopolies.

In England, the Statute of Monopolies, 1623 is an important statute which allowed the kind of monopoly to protect the interest of the creators. Later, in 1710, to deal with high coal prices, caused by Newcastle Coal Monopoly, the New Law was passed. However, the English law of restraint of trade i.e. the principle of *agreements in restraint of trade* is the direct predecessor to modern competition law. Presently, the Competition Act, 1998 and the Enterprise Act, 2002 are the most important statutes with a purely national dimension. The Competition Act, 1998 contains two prohibitions: Chapter- 1 prohibition is modelled on Art. 101 TFEU and forbids

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agreements, decisions by associations of undertakings and concerted practices, having an objective to prohibit competition, while Chapter- 2 follows the 102 TFEU and prohibits the abuse of dominant positions. The Act empowers the OFT (Office of Fair Trade) to obtain information, to carry out, on the spot investigations, to adopt decisions and to impose penalties on undertakings. The Enterprise Act, 2002 abolished the office of the Director General of Fair Trading and created a new corporate body named OFT. The Act created the Competition Appellate Tribunal (CAT) and introduced the new model for the investigation of mergers and markets.

**Chapter 1** titled, “Competition Policy and Economics” deals with the different practices like anti-competitive agreements, abusive behaviour, mergers and public restrictions of competition as the subjects of the Competition Law. This chapter also includes the different theoretical issues of competition. The authors have also discussed the different functions of Competition Law, which includes consumer protection, redistribution, protecting competitors etc. Most importantly, the authors give insights into analysing the concept of market definition and market power.

**Chapter 2** “Overview of EU and UK Competition Law” deals with different instruments governing the Competition law framework in the European Union and the UK. In this chapter the authors have extensively analysed the different regulatory aspects in the EU, starting from the Rome Treaty, 1957 which later on, was renamed as the Treaty on the Functioning of the European Union (TFEU), in 2009. The chapter also discusses about the institutional structure of the EU with regard to competition law and the legal framework in the UK, where the market is regulated under the two laws, viz. the Competition Act, 1998 and the Enterprise Act, 2002. Apart from this, the chapter also analyses the institutional structures under both the Acts and delves into the relationship between the EU Competition law and the domestic laws in the UK.

**Chapters 3 & 4** titled “Article 101 (1)” and “Article 101 (3)” deal with the anti-competitive agreements. While the third chapter focuses on undertakings, association of undertakings, agreements, decisions and concerted practices, the authors have also adequately analysed the object or effect of preventing, restricting or distorting

competition. The *de minimis* doctrine and effects thereof with the relevant case laws have also been examined. The fourth chapter looks into the different legal exemptions to the prohibition in Article 101(1).

**Chapter 5** titled “Article 102” contributes to the discussion on the abuse of dominant position. The authors have analysed the idea of dominant position in normal market and in the context of small firms and narrow markets, in the light of case laws, in a very comprehensive way. Apart from these, the Commission’s guidance on enforcement and infringement has also been dealt with.

**Chapter 6**, “The obligations of member states under the EU Competition rules” throws light on the extent to which the member states abide by the EU competition norms. Issues like duty of sincere co-operation, state monopolies of a commercial character and state aids have been outlined so as to understand, to what extent such practices do not have anti-competitive effect.

**Chapters 7 & 8**, “Article 101 & 102: Public enforcement by the European Commission and National Competition Authorities under Regulation 1/2003” & “Article 101 & 102: Private enforcement in the courts of Member States” enlighten the readers about the enforcement mechanism in the EU region, both by the Commission and the national regulatory bodies. The authors *inter alia* discuss the scope of arbitration in competition law disputes and propose some reformatory steps for private enforcement.

**Chapters 9 & 10** titled “The Competition Act, 1998 Substantive Provisions” and “The Competition Act, 1998 and the Cartel offence: Public enforcement and procedure” provides insights to the different provisions of the Competition Act, 1998. Chapter 10 specifically focuses on the cartel issues and the regulatory mechanisms in a vivid way.

**Chapter 11** titled “Enterprise Act, 2002: Market studies and market investigations” deals with the different provisions of the Enterprises Act, 2002. The authors have eruditely dealt with market investigations in detail, along with public interest cases and the enforcement mechanisms.

**Chapter 12**, “International dimension of Competition law” elaborates the concept of extraterritoriality in the context of the US, EU, UK Competition Law. The issues of resistance to extraterritorial application of competition law and the internationalisation of competition law have also been extensively discussed.

**Chapters 13, 14 & 15** titled “Horizontal Agreements- Cartel”; “Horizontal Agreements- Oligopoly, Tacit Collusion and Collective Dominance” & “Horizontal Agreements-Co-Operation agreements” examine the different aspects on horizontal agreements. Chapter 13 elaborates on the different aspects of horizontal agreements, of the nature of cartel and the attitudes of the regulatory authorities towards it. Apart from this, advertising restrictions and other anti- competitive horizontal restraints come under the purview of this chapter. Various aspects on oligopoly, tacit collusion and collective dominance in the light of Articles 101 and 102 of the TFEU are also lucidly presented. While Chapter 15 focuses on different co-operation agreements like joint ventures, information agreements, research and development agreements, commercialisation agreements, standardisation agreements etc.

**Chapter 16** “Vertical Agreements” speaks about the different aspects of vertical agreements. Views regarding chain of distribution, vertical integration, role of the commercial agents, sub-contracting agreements etc have also been expressed succinctly.

**Chapters 17 & 18**, titled “Abuse of dominance (1): non-pricing practices” and “Abuse of dominance (2): pricing practices”, deal with the treatment of abuse of dominance. The authors, with relevant case laws, have also elaborated on exclusive dealing agreements, tying, refusal to supply, exploitative pricing practices, exclusive dealing agreements, bundling, predatory pricing, margin squeezing, price discrimination, among others.

**Chapter 19** titled “The relationship between intellectual property rights and competition law” deals with the interplay between Intellectual Property Law and Competition Law. The authors have explained the different aspects of this relationship in the context of

Articles 101 and 102 of the TFEU, relating the same to the UN laws on competition law.

**Chapters 20, 21 & 22**, titled “Merger-(1) Introduction”, “Merger-(2) EU Law” and “Merger-(3) UK Law” deal with the different aspects of merger such as reasons for merger and need for the regulation of merger. Differential treatments in regard to the regulation of the same under the EU and UK Law have been also been stressed upon.

**Chapter 23**, “Particular Sectors” throws light on sectors of strategic importance for a country. Sectors like nuclear energy, military equipment, agriculture, coal and steel, transport, regulated industries, electronic communications, post, energy and water have been looked at from the perspective of competition law.

To conclude, the book focuses on each and every aspect of competition law. The topics have been discussed in a detailed and lucid manner, in the light of the practices under the European Commission, as well as the legal system in UK. The authors have also referred to the US and Australian standards, wherever required. The book is a good resource for students, academicians and practitioners in the field of competition law.