

Ariel Ezrachi (ed.), *Research Handbook on International Competition Law*

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The number of jurisdictions with competition laws and competition law enforcement agencies proliferates; so does the number of networks and platforms that offer stakeholders opportunities to cooperate on matters of international competition law. With a certain time lag, scholarship focusing on international aspects of competition law and policy has also joined the party. A little over a decade ago, this was an academic field populated by a few pioneering scholars who recognized the value of looking beyond the national boundaries of competition law regimes in order to compare different national approaches and identify international trends in enforcement and policy setting. Within a relatively short period of time, the academic scene has changed. It has become difficult to keep track of all journal articles, books, and conference papers that adopt an “international” and/or “comparative” approach to competition law scholarship. As Ariel Ezrachi, the editor of the *Research Handbook on International Competition Law*, notes in his introduction, the terms “competition law” and “international” have never been so closely associated. In fact, for some the term “international” has become too confining and “global” has become the new framework to explore competition issues.

Academic work in international competition law can be an important complement to cooperation and collaboration by other stakeholders, in particular competition authorities. It can provide better insights into important trends and developments and can help to identify superior analytical standards and enforcement practices. It can also provide critical perspective where collaboration within international networks and organizations may become too consensus oriented and too focused on promoting their own achievements. This includes the ability to identify issues where, upon closer examination, international consensus on norms and policies may be more elusive than we may want to accept. Of course, the proliferation of academic research in international competition law is not without

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risks. Academic work in an increasingly crowded discipline risks losing originality. And while describing different competition regimes side by side is not too challenging, meaningful comparative study is difficult as it requires deep insight into, and a great deal of familiarity with, a number of competition law regimes.

Mapped against this framework, *Ezrachi's Research Handbook on International Competition Law* does supremely well. It might not be totally immune against some risks, but its achievements and ability to contribute to a better understanding of international competition law and of future developments far outweigh any shortcomings. Many of its contributions are based on thorough research, provide interesting insight and perspective, and identify relevant questions that require further research.

The key to the book's success is *Ezrachi's* ability to gather an impressive group of authors, many considered among the leaders in their specialty discipline. Their contributions are organized around three major themes, including unilateral efforts and collaborative networks; enforcement challenges; and comparative studies. The structure mirrors to some extent the development of international competition law, which started as a conflict avoidance mechanism but today has become focused on identifying common standards and practices and on cooperation to improve competition law enforcement, including outreach efforts to bring jurisdictions with little or no history in competition law enforcement on board.

Part II on unilateral efforts and collaborative networks starts with *Florian Wagner-von Papp's* contribution on extraterritorial competition law enforcement. He describes how international competition law initially had much to do with the irritation of many jurisdictions over unilateral, effects-based extraterritorial anti-trust law enforcement by the United States and how the international community has managed to mitigate potential conflicts even though extraterritorial competition law enforcement based on an effects doctrine has become widely accepted. The story about the development of international competition law relationships continues to be told in the contribution by *Maher and Papadopoulos*, who provide an excellent introduction to the complex relationships among the numerous competition authority networks and seek explanations for why the number of networks has grown so significantly. The following essay by *Hollmann, Kovacic, and Robertson* focuses more narrowly on the achievements of the International Competition Network ("ICN"). Contributions on the ICN's working methods and on the impact of nongovernmental organization on international competition law development complete the picture.

But before turning to Part III, the reader learns in *Maurice Stucke's* essay that behavioral economics could improve competition law even at an international level, beyond its ability to liberate competition law from the narrow confines of welfare economics on a domestic level. Replacing welfare theory with the more amorphous, less rigorous principles of behavioral economics would be a development that might worry some readers. In fact, welfare economics has been the one universally unifying principle in international competition law. It has enabled meaningful dialogue where differences in legal traditions made such dialogue difficult. It is behind the internationally accepted norm that hard core cartels are the supreme vice

of markets and many other international achievements, including the wide-spread agreement on substantive merger analysis, competition advocacy to eliminate anticompetitive regulation, and whatever rudimentary agreement we have today on common analytical standards in unilateral conduct cases.

Part III on Enforcement Challenges starts with a piece by Fels and Ng on the need to find more effective competition advocacy strategies. Next, Kathryn McMahon discusses the particular challenges faced by newer competition regimes in their efforts to adjust to international competition law standards. Her contribution highlights the challenges of newer competition regimes when trying to follow what has been promoted as international best practices in competition law policy and enforcement. In particular, she questions whether the seemingly global consensus on the central role of welfare economics provides a suitable model for competition laws in less-developed economies. The question is legitimate, but the answer remains uncertain. The contribution highlights that at least for now there is no alternative model of competition law and policy that developing countries could follow in lieu of the economics-centered views widely promoted elsewhere. Perhaps with the exception of South Africa, no jurisdiction has been successful in establishing an active and credible enforcement system that pursues multiple goals adjusted to the jurisdiction's individual context, and even there it remains unclear whether noneconomic goals in the competition law have any significant impact on case outcomes. Before we encourage newer competition regimes to follow alternative paths, we should have a fairly robust model supporting their journey; otherwise there is a risk that they end up in the desert.

McMahon's essay is followed by Don Baker's insightful discussion of the role and limitations of private enforcement in a competition regime. Baker avoids the unfortunate labeling of U.S. antitrust litigation system as "abusive" or "excessive," which so often clouds the debate and prevents a more meaningful and result-oriented discussion on private enforcement in Europe. Instead, the essay reveals many insightful ideas on what makes private litigation work, under what—limited—circumstances private litigation can contribute to a more effective competition regime, and when it can become an obstacle. Among other things, he observes that private litigation will deliver benefits mostly in areas where rules are crystal clear (cartels) and less so in others (unilateral conduct), that increased private litigation will lead to increased uncertainty for all players, and that more private litigation will also lead to more, rather than less, work for competition authorities as they must devote additional resources to contribute to clarity of rules and consistency. Baker's contribution provides numerous observations that should be helpful and relevant in the future debate on European efforts to promote private litigation in competition regimes. Part III concludes with contributions by Beaton-Wells and O'Kane on challenges faced in criminal enforcement systems.

Part IV of the *Research Handbook* comprises a series of (more or less) comparative papers on substantive and procedural topics. Most noteworthy are the interesting contributions by Danny Sokol and Bill Blumenthal on the status of harmonisation of merger laws and by Giorgio Monti on the search of global standards in unilateral conduct laws. Both use careful analysis to demonstrate

that, despite all efforts devoted to convergence and assimilation and despite all achievements of international networks described elsewhere in the book, in reality major differences between jurisdictions continue to exist and are likely to remain for many years to come. This part also includes Alison Jones's excellent examination of the difficult boundary between unilateral conduct and coordinated conduct where the parties to an agreement are part of the same corporate group but do not have a 100 % parent/subsidiary relationship. Her essay is probably one of the best studies of this challenging issue. Part IV concludes with a comparative study on RPM and several IP-related papers that—despite the Research Handbook's goal—focus largely on domestic developments, as well as a paper discussing the representation of consumer interests in international competition law.

Like any collection of essays, the Research Handbook includes carefully researched and insightful papers, many of which are mentioned earlier, as well as the more superficial, light study. Philip Mardsen's essay on the increasingly informal collaboration efforts lies closer to that end of the spectrum. The comparison between the hardworking and highly effective, all competition-focused ICN collaborators and the lazy and unproductive OECD bureaucrats who are primarily concerned about writing treaties and planning their next business trips provides an entertaining read. But it expresses a view that is stuck in the days of the "Organization of Excellent Cocktails and Dinners" and overlooks changes within the OECD during the last decade, as well as the results of regular impact evaluations that consistently demonstrate the value of the OECD Competition Committee's work. Of course, there can and should be different views on the relative importance of different networks in international competition law. But the author's failure to engage more rigorously in the institutional dynamics in international competition law undermines his conclusions about how a greater understanding within the competition community and consensus on internationally recognized best practices can be reached most effectively. As Maher and Papadopoulos discuss elsewhere in the Research Handbook, this process cannot properly be understood as one organization versus the other or one working method versus the other. The work of one network does not occur in isolation and would never be as effective if it did not exist within the context of a wider network of activities. More to the point, writing reports or handbooks that summarize enforcement practices is in some respect a valuable exercise. But these activities would not be very meaningful without ongoing, rigorous discussions of complex policy and enforcement questions that are in many instances novel and certainly not appropriate for a quick development of international standards, or without meetings where outside experts challenge the views of the competition community and provide input toward suitable solutions.

Any good research-oriented book should identify open questions for further research. The Research Handbook does not attempt to explicitly identify issues that should populate our future research agenda. But any reader of its essays will find plenty of inspiration for research in questions related to policy, enforcement process, and institutional design and interaction. Ezrachi's introduction, for example, raises a fundamental question about the benefits of the intensifying and increasingly inclusive discussion of international competition law, convergence,

and cooperation. As Ezrachi correctly observes, international cooperation has led to greater convergence and promoted capacity building; being part of a strong network helps each individual member to act more confidently in a domestic environment where otherwise they would be more isolated. For Ezrachi, this also means that the international competition community has attained greater influence. But this is an open question that requires further study. The competition community's increased attention on an all-competition and competition-only environment may have the principal effect of increasing everyone's comfort and enthusiasm because everyone speaks to, and hears from, the like-minded. This may have resulted in more effective and more confident day-to-day operations. But it has not necessarily helped to increase the competition community's influence in other policy areas. There could be an interesting question whether devoting relatively more resources and efforts of the competition community to institutions with a broader mission and with a pursuit of a wider range of policy goals would ultimately provide a greater return on investment for the public money that supports many international initiatives and activities in competition law.

The *Research Handbook* offers many valuable insights into international competition law by an impressive list of widely recognized authors. They cover a wide spectrum of issues under the international competition law umbrella, and many readers will find relevant interesting contributions that match their particular interest. Undoubtedly, the *Research Handbook* is an excellent addition to the existing literature, and it will make the discipline accessible to a wider readership.