



Book Review: Competition Law in South Asia: Policy Diffusion and Transfer

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“Competition Law in South Asia: Policy Diffusion and Transfer” by Amber Darr is a profound exploration of how countries in South Asia have adopted and implemented their respective modern competition legislations. The book dives into the unique interplay of mechanisms, legal frameworks, and political institutions that have influenced the success or failure of competition reforms in South Asian countries while keeping a firm eye on the comparative experiences of India and Pakistan. Over a span of nine chapters, the author narrates her views on the factors that have shaped the trajectory of establishing functioning competition laws in the region.

The initial chapters lay the theoretical framework, emphasizing the importance of compatibility and legitimacy in the adoption and subsequent implementation of competition laws. At the very outset, the author contextualises the historical development of competition law in South Asia, highlighting that the very idea of competition was born out of the second-generation reforms that multilateral organizations engaged in delivering in the region. Among these countries, India gained a lead by implementing a modern competition act in 2002, with others subsequently following suit. The rationale for adopting these laws was two-fold - enhancing domestic economic efficiency and signalling to international corporations their desirability as business partners.

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However, in spite of adopting such a competition framework, the author states that only two of the South Asian countries, India and Pakistan, have had significant progression in their respective regimes. This comparable variation in the performance of these competition regimes is attributed to various factors, primary amongst them being governmental support and the attitudes of the courts towards them. The book thus further delves into a comparative study of the adoption, implementation, compatibility and legitimacy of the competition regimes in India and Pakistan, as well as other South Asian countries, highlighting the unique challenges and successes faced by each country. Finally, the author integrates numerous insights gained from the diffusion and transfer processes, new institutional economics, and comparative law literatures into developing an analytical framework that can serve as a guide to assess the impact of the adoption process on the subsequent implementation of competition legislation.

The book begins by discussing the Law and Development movement that began in the 1960s. Although the movement was backed by the US Agency for International Development and the Ford Foundation, it proved unsuccessful as it encouraged countries to transplant laws without adapting them to their specific contexts. This failure, according to the author, highlighted the crucial need for compatibility between borrowed laws and the adopting country's circumstances. She points out that such incompatible laws were often ignored or misused by local elites, and thus proposes an analytical framework that integrates insights from comparative law, policy diffusion and transfer, and new institutional economics. This framework could explore the connection between the adoption and implementation of borrowed laws, particularly economic laws. Such a framework may, whilst focusing on compatibility and legitimacy, assess the pre-conditions of transfer, the design, authority and legality of institutions and their interactions at the stage of adoption of competition laws. The author feels that the impact of focusing on compatibility and legitimacy in the interpretation of the law and its enforcement may be felt at the stage of implementation. She lays emphasis on the importance of institutions in each phase in shaping the legislation and laying the groundwork for the operation of the law, stating that "bottom-up and participatory democratic institutions" can have the effect of promoting better understanding, application, and integration of adopted laws into the existing legal system.

The author proceeds to analyse the experience of the Indian and Pakistani competition regimes. It is worthwhile to note that the dawn of competition law in India and Pakistan began around the same time, with both countries enacting their anti-monopoly laws in the late 1960s and early 1970s. In India, the Monopolies and Restrictive Trade Practices Act was enacted in 1969, drawing inspiration from the UK Monopolies and Restrictive Practices (Inquiry and Control) Act of 1948. Although the Indian Constitution did not expressly address monopolies, it relied on constitutional articles related to social welfare and economic stability. In Pakistan, the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance was promulgated in 1970, invoking a constitutional provision related to economic and financial stability. Like its Indian counterpart, it mirrored the UK legislation of 1948. However, a more modern approach to competition enforcement, with a focus on economic efficiency, consumer welfare, and alignment with international competition standards, was sought out in the early 2000s. Thus, India enacted the Competition Act of 2002 and Pakistan followed with the Competition Ordinance of 2007.

The author observes that though both countries followed a “parallel institutional landscape” with regard to their respective competition legislations, their evolution has been in contrast to each other, primarily due to the political situations arising in the regions. Moreover, there have been major differences in the manner of adoption of these laws in both countries in terms of the institutions and mechanisms involved. The author asserts that India had engaged “a wide range of bottom-up, participatory, and inclusive institutions drawn from all three branches of the state... [having] the capacity not only to aggregate knowledge from a relatively broad spectrum of domestic stakeholders but also to utilise this knowledge to appropriately ‘Indian-ise’ the competition blueprint for the Indian context.” In contrast to this approach, Pakistan’s adoption procedure did not involve drawing from the experience of local stakeholders into adapting international competition principles to region-specific interests. It was rather “driven by the World Bank and executed through a limited number of exclusive and top-down institutions.” This difference in adoption approach affected the compatibility and legitimacy of the competition laws in their respective contexts, with the Indian

legislation appearing more compatible, reflecting in its language and domestic legitimacy, over its Pakistani counterpart.

Further, the progress and variations in the adoption of modern competition legislation among other South Asian countries, including Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, and Sri Lanka, have also been discussed in the book. These nations share similarities in economic development, relationships with multilateral agencies, geographical connections, and overlapping histories. The author opines that almost all of these countries have taken positive steps towards adopting more modern competition legislation, barring Afghanistan, which only has a draft competition act, though that is indicative of its intention to adopt such legislation, and Bhutan, which considers its existing competition policy as sufficient. Although a closer examination of the legislations in these countries reveals significant variations in their legislation, structure, role and appointment procedures of competition authorities as well as enforcement processes, these countries exhibit transfer mechanisms and institutions similar to India and Pakistan's adoption processes. According to the author, all South Asian countries exhibit two commonalities with regard to adopting a competition policy - their motivation for adopting competition legislation, influenced by engagement with the WTO, and the limited experience and expertise of constitutional legislative institutions in aggregating local knowledge or consent. The author, however, voices her concerns that the limited experience and expertise of the countries may result in superficial compatibility and legitimacy of such adopted competition legislation in those regions, thereby posing significant challenges to their proper integration into pre-existing regional legal systems. Countries such as Afghanistan and Bhutan, which have drafted competition policies based on their engagement driven by Western, multilateral agencies rather than internal demand, with limited domestic input in the proposed policies or laws, may particularly suffer from this problem.

For India and Pakistan, however, the issue of enforcing their respective competition laws posed a bigger challenge to the regime than the integration of the law, despite having promptly established their national competition authorities, the Competition Commission of India (CCI) and the Competition Commission of Pakistan (CCP). According to the

author, an examination of the decisions made by the CCI and the CCP indicates the unique interpretive strategies adopted by each national competition authority, mirroring the level of compatibility and legitimacy established during the adoption phase of each competition legislation. The author also contends that these strategies also reflect influence over their implementation trajectory.

The CCI's reliance on domestic case law indicates a desire to affirm domestic legitimacy, while the CCP's extensive use of foreign authorities suggests a focus on leveraging international legitimacy. Beyond shaping substantive arguments, these strategies impact the public's understanding and utilization of their decisions, influencing future performance. On the flip side, however, the author highlights the inconsistency in the number of orders issued in response to filed complaints compared to orders initiated *suo motu* in both jurisdictions. In the case of India, it is seen that the number of orders stemming from complaints surpasses those initiated *suo motu*. The author attributes such occurrences to better understanding, utilization, and application of the competition legislation by the public. Conversely, in Pakistan, where orders related to *suo motu* proceedings outnumber those from complaints, it implies that while the authority comprehends and is committed to utilizing the legislation, the public may lack an understanding of the Act or trust in the CCP's ability to deliver, or both.

Despite this correlation between complaints and the public's understanding and use of competition legislation, there has been a decrease in the number of complaints received by the CCI. The author, however, reasons that this does not necessarily indicate a decline in overall understanding or utilization, but rather a decline in frivolous complaints due to a better understanding of the legislation's scope, as a significant portion of complaints in the CCI's early years did not strictly pertain to competition. Moreover, though both the CCI and CCP have intervened in a broad range of sectors, the number of orders related to anti-competitive practices, including anti-competitive agreements and abuse of dominant position, has been somewhat inconsistent. While the CCI has gradually increased its activity after a slow start, the CCP, despite a robust beginning, experienced a slowdown and even a complete halt in 2014. Despite having

resumed enforcement since then, the CCP's total orders remain notably lower than in its early years.

The role of sanctions, too, has been of particular significance. The author opines that apart from serving both punitive and deterrent purposes, sanctions also serve as crucial indicators of the effectiveness of competition law authorities. The competition legislations in India and Pakistan empower the CCI and CCP to impose both monetary and behavioural sanctions as deemed appropriate. However, the effectiveness of enforcing competition legislation in a country is not only reliant on the performance of the established competition authority but also heavily influenced by the interaction between the adopted competition system and the pre-existing legal system of the country. Examining the penal strategies of both authorities provides insight into how the CCI and CCP perceive their enforcement ability, reflecting their legitimacy. While both have utilized a range of sanctions, the CCI's preference for a balanced strategy implies a primarily corrective role, whereas the CCP, with a proclivity for penalties, assumes a more punitive character.

The author asserts that the penal strategies employed by the CCI and the CCP, along with the success of penalty recovery, are directly influenced by the compatibility and legitimacy established during the adoption process. She also delves into the examination of the nature and extent of interactions between the adopted competition system and the pre-existing legal systems in India and Pakistan by assessing petitions filed from orders of the CCI and CCP before the general courts in each country. Here, the author's evaluation of these petitions illustrates that the character and quality of these interactions significantly impact competition enforcement in these nations. She contends that the interactions between the competition legislations of India and Pakistan and their pre-existing legal systems are largely shaped by the strategies, mechanisms, and institutions employed during the initial adoption of their respective competition legislations and the compatibility and legitimacy generated in that process. She further argues that the nature of these interactions dictates the level of competition enforcement in the country and the speed at which the adopted legislation integrates with the existing legal framework.

Moving beyond India and Pakistan, the author also explores the current state of competition enforcement in the remaining six South

Asian countries, predicting implementation prospects for those yet to adopt competition laws. She draws lessons from the Indian and Pakistani experiences and examines patterns of diffusion, transfer, and implementation of competition legislation across the region. In the final chapter, she focuses on motivating governments and competition authorities in South Asian countries to engage more meaningfully with competition enforcement. The author makes a pertinent argument that governments are more likely to support competition enforcement if they are convinced of its potential to contribute to broader economic and social goals. Moreover, she argues that nations with legal frameworks permitting autonomous competition authorities are more strategically positioned to foster a culture of competition and streamline future enforcement efforts, in contrast to jurisdictions where enforcement is wholly integrated into governmental structures. The book thereby concludes by proposing implementation strategies for these countries.

Opinion

The author's work not only provides a detailed analysis of the South Asian experience but also contributes to the broader discourse on the diffusion and transfer of legal frameworks in the global arena. Throughout the book, the author skilfully weaves together legal transplant literature, policy diffusion and transfer theories, and insights from new institutional economics. The integrated analytical framework provides a structured approach to understanding the nuanced dynamics of competition law adoption and implementation. The author's in-depth analysis, supported by case studies and comparisons, further elevates the understanding of how competition law policies in various South Asian countries came to be established but also to understand the trajectory it may follow while adapting to newer challenges of highly dynamic and globalised markets. The author has also lucidly evaluated the interpretation of statutory provisions related to anticompetitive agreements, penal strategies, and the interaction between competition authorities and pre-existing dispute resolution authorities. This comparative analysis efficiently highlights the varied performances of the Indian and Pakistani competition regimes. The author also provides a 'competition tour' of South Asia to paint a clearer picture of the adoption of competition regimes in the region. In the process, she provides for a much-detailed understanding of how despite

being at similar stages of economic development and having overlapping cultures and histories, countries may differ in their respective approach to adopting modern competition regimes.

The book has been written in a manner that feels like a conversation with the author on the subject, and as such, is a 'must read' not only for academics and competition law practitioners but also for policymakers and students of competition law, as well as anyone wishing to understand the nuances involved in adapting newer laws to the prevalent legal climate of any country.