

Federal Antitrust and EC Competition Law Analysis BY FEMI ALESE [Hampshire, United Kingdom: Ashgate, 2008. xiii + 544pp. Hardcover: £95.00]

Books written about competition law in the European Community and antitrust law in the United States often have the laws of one jurisdiction as their primary focus while relegating the laws of the other jurisdiction to their footnotes, or thumbnail sketches in single chapters, so that the latter may be used simply for the purposes of broad comparisons with the former. This book departs from this tradition. The author presents the reader with a carefully balanced exposition of the competition laws of both the European Community and the United States in each chapter. The author has also taken a pragmatic approach towards the organisational structure of the book. Rather than using the similarities between the key legislative prohibitions in each jurisdiction (*e.g.* Article 81 of the Treaty of Rome and Section 1 of the Sherman Act, and Article 82 of the Treaty of Rome and Section 2 of the Sherman Act) as a framework for his analysis, Alese structures the chapters in this book around key thematic issues and specific categories of conduct that may attract the attention of the competition regulator or give rise to a competition law related complaint. Chapters 2 to 7, for example, deal with anti-competitive agreements, with dedicated chapters focusing on the formal and theoretical requirements of liability (Chapter 2 – “Restrictive Agreements: Legal Requirements; Chapter 3 – “Agreements and Concerted Practices), agreements which might *prima facie* appear unlawful but are in fact lawful (Chapter 4 – “Permissible Horizontal Restraints”), and the various contexts in which the prohibition against anti-competitive agreements may arise (Chapter 5 – “Group Boycotts”, Chapter 6 – “Information Exchange Agreements”, and Chapter 7 – “Vertical Resale Restrictions”). A similar framework can be seen in the subject matter presented in chapters 8 to 14, which deal with anti-competitive unilateral conduct, with individual chapters dedicated to specific forms of anti-competitive behavior: “Refusal to Supply”, “Exclusive Dealing Arrangements”, “Predatory Pricing” and “Price Discrimination”, being Chapters 11 to 14. By adopting such an organisational structure, the contents of this book are easily accessible to competition lawyers interested in conducting a quick review of how the competition laws on both sides of the Atlantic are applied in these particular contexts.

Another feature of this book which competition lawyers may find useful is the lucid and concise treatment it gives to the major schools of economic theory that underlie

American antitrust law. Chapter 10, for example, deals with “Leverage Theory and Tying” and gives the reader a good overview of the key strains of economic thought that have influenced the way competition law and policy in the United States has developed in the last fifty years. Similarly, in Chapter 15 which deals with “Horizontal Mergers and Acquisitions”, there is a substantial discussion of the economic theories behind the legal prohibitions against certain concentrations which is accompanied by graphical representations of the micro-economic models and formulae used by economists to explain the conclusions relating to the desirability or undesirability of such conduct. Given the increasing prevalence of economic analysis by modern competition regulators today, the approach taken in this book will be very helpful to lawyers who lack any formal training in the discipline. One wishes, however, that the discussion could have also highlighted the limitations of a purely *economics*-based approach to the interpretation and application of competition law given the importance of establishing minimum threshold levels of certainty and clarity when articulating *legal* principles.

The substantive analysis of the case law jurisprudence from both sides of the Atlantic is detailed and extensive. The author highlights the leading decisions of the European courts and the US Federal courts in each chapter and reproduces the most often cited passages from these judgments, along with a litany of secondary cases in the footnotes that will delight the fastidious researcher seeking to verify the authority of the legal propositions they articulate. The wealth of citations incorporated into the footnotes of this book – which includes numerous references to the plethora of EC Regulations, Commission Notices, Reports and Discussion Papers, as well as academic writings – reinforces the heroic effort expended by the author in condensing a complex area of legal specialisation from two different jurisdictions into a relatively concise volume just over 500 pages in length. In keeping with its focus on the economics-based approach towards competition law, the author demonstrates a clear preference in his footnote references for academic writings published by American authors.

This book is not for absolute novices seeking to get their feet wet in the waters of competition or antitrust law. While the introductory chapter lays out the historical and socio-political background in which the competition regulators in each jurisdiction operate and some of the later chapters set the stage for the author’s in-depth discussion of the specific types of conduct to which competition law prohibitions may be applied, the pace at which the discussion moves beyond general concepts and first principles and into the thicket of technical details is swift and unrelenting. This is particularly apparent in the last few chapters dealing with mergers where the author plunges the reader into a pool of procedure, economic theory and a swell of case law. However, it is somewhat surprising, and a little disappointing, that this rising tide of content suddenly and inexplicably recedes in the last chapter of the book (Chapter 17, enigmatically titled “Limitations and Conclusions”) which appears to contain a hodgepodge of “other” residual issues that could not be neatly fitted into any of the other chapters. This last chapter attempts to cover, in the space of less than 30 pages, topics as diverse (and complex) as state action, public undertakings, extraterritoriality and anti-trust standing issues in a single breath under the banner of “limitations affecting the scope of the application of competition provisions”. Many of the issues sketched out in this chapter actually extend the reach of the competition

law prohibitions, or simply alter the ways in which they would otherwise be interpreted, as a result of other extrinsic policy objectives impinging upon the basic goals of competition or antitrust law.

Notwithstanding this minor quibble, one must agree with the observations of the views of Professor Herbert Hovenkamp, who wrote the Preface to this book, which describes this work as “an excellent one-volume comparative study”. The strength of this book lies in the balance it has struck between achieving breadth in its scope of coverage and depth in its analysis of the competition laws of the United States and the European Community. The author has done a commendable job of integrating both the doctrinal and theoretical facets of the subject matter into his discussion of the legal frameworks of each jurisdiction and should be congratulated for making a valuable contribution to the literature in this field.

BURTON ONG
National University of Singapore