



## Introduction to the competition law special issue

Amber Darr

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## EDITORIAL

# Introduction to the competition law special issue

Competition law – known as antitrust law in the United States and anti-monopoly law in China and Russia – aims to ensure market competition and consumer welfare by regulating anti-competitive conduct in domestic economies. Until the mid-20th century, there were less than ten competition regimes worldwide.<sup>1</sup> However, upon the end of the Second World War, countries across Asia, Europe and Latin America began implementing competition policies. By the 1980s, global implementation of competition regimes had become widespread, and this gained further impetus towards the mid-1990s with the advent of the World Trade Organization. At present, there are over 125 competition regimes operating throughout the world,<sup>2</sup> including amongst them, the Indian and Pakistani competition regimes.

India became the first South Asian country to enact a modern competition law – the Competition Act 2002. Less than five years later, Pakistan followed suit by promulgating the Competition Ordinance 2007. Although India and Pakistan had anti-monopoly laws in place since 1969 and 1970 respectively, the adoption of modern competition laws was intended to herald, for the two countries, a new era of economic development and consumer welfare. However, despite their contemporaneous adoption, the implementation of the Indian and Pakistani competition laws has proceeded along very different trajectories and to very different effects. A study of these implementation trajectories and of the factors that led to their divergence is of interest not only for those interested in the implementation of competition laws in India and Pakistan, but also for other developing economies.

In November 2018, the Centre for Law, Economics and Society at University College London organized the 1<sup>st</sup> South Asian Competition Law Conference to explore and evaluate the progress made by the Indian and Pakistani competition laws in the first decade of their operations and, more importantly, to lay the foundations of a South Asian competition dialogue in which, in time, competition authorities from the region could also join to discover areas of common interest and to learn from each other's experience rather than only from that of their developed counterparts. The idea of this special issue emerged from the conference. The *Indian Law Review*, with its focus on a wide gamut of legal issues that may be of interest not only to India, but to the entire South Asian region, is ideally placed to showcase and further the discussions initiated at that conference and to introduce competition law to a wider legal audience.

To this end, this special issue carries four full-length articles and one case note which highlight different aspects of competition enforcement in India and Pakistan. The article by *Geeta Gouri* and *Kalyani Pandya* traces the evolution of the Indian competition law, examines the economic circumstances in which India acquired its modern competition law, and evaluates the sufficiency of this law. In addition, this article analyses the amendments proposed to it by the Competition Law Review Committee and the draft Competition Bill 2020, designed to meet the demands of India's growing digital economy. The article also

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<sup>1</sup>OECD Competition Trends 2020 (OECD, 26 February 2020) <<http://www.oecd.org/competition/oecd-competition-trends.htm>> accessed 4 October 2020.

<sup>2</sup>Ibid.

makes recommendations to the Competition Commission of India (hereinafter, the “CCI”) for taking up cases related to digital markets. This article is supplemented by a detailed case note by *Aakash Kumbhat* on CCI’s decision in the *Google Search* case, which not only provides an in-depth analysis of the *Google* case, but also locates CCI’s most recent approach towards digital platforms, in its own as well as international competition jurisprudence.

The article by *Joseph Wilson* notes the revolutionary effect of economic liberalization on electronic media in Pakistan and India, particularly in relation to the live broadcasting of sports events which generate considerable excitement in both India and Pakistan. In examining the competition implications of broadcasting practices, the article highlights that live transmissions of sports events are a distinct relevant product market as the entertainment value of such events loses its significance if the telecast is delayed. The article further states that there is an often-ignored public interest dimension to the live transmission of championship matches which may potentially come into conflict with the commercial exigencies of selling broadcasting rights to the highest bidder. Having laid out the two scenarios, the article compares the strategies adopted by India and Pakistan to resolve this conflict between public interest and commercialization and recommends a balanced approach that may be adopted in this regard.

In contrast to the world of digital and broadcasting revolutions, the article by *Dhanendra Kumar* and *Rahul Singh* focuses on the age-old institution of trade associations. The article traces the history of trade associations and their traditional role in the Indian economy and discusses how these associations are viewed under the Competition Act 2002. The article argues that the CCI, like competition authorities of more advanced economies, should distinguish between the anti-competitive and pro-competitive effects of practices of trade associations. On the basis of a comparative analysis of leading competition jurisdictions, the article urges the CCI to facilitate and support trade associations in their pro-competitive activities and to issue guidelines so that businesses may benefit from each other’s experiences without exchanging sensitive, potentially anti-competitive, information.

The article by *Manas Kumar Chaudhuri*, *Sagardeep Rathi* and *Anisha Chand* takes up cartels, which are perhaps the most critical and well-recognized instances of anti-competitive practices and, therefore, of competition enforcement anywhere in the world. The article traces the developments in competition jurisprudence in India, and demonstrates, with reference to the CCI’s decisions, the approach the CCI has hitherto adopted for identifying and prosecuting cartels. The article also provides critical insight into procedural hurdles typically encountered by the CCI during cartel investigations and addresses the challenges faced by a relatively young regulator in entering the turfs of sectoral regulators that have historically enjoyed near exclusive control in their domain. The article concludes with an assessment of the CCI’s enforcement experience and identifies areas in which it has been successful as well as those in which it may still strengthen its practice.

The diversity of the issues showcased in this special issue notwithstanding, these represent only a small part of the entire range of economic and social issues that may be evaluated in relation to competition law. For instance, recent scholarship in the field of competition suggests that competition law has a role to play in economic development, distributive justice, and social regulation. Unfortunately, however, a lack of indigenous understanding of the scope and implications of competition law prevents new competition regimes from fully harnessing their potential. By providing space for an exclusively competition-based discus-

sion, this special issue of the Indian Law Review sets the stage for future conversations and scholarship on competition law, particularly as experienced in an expanding South Asian context as other countries in the region adopt a version of competition law for their respective economies.

Amber Darr  
*Coventry Law School and University College London*  
 [amber.darr@ucl.ac.uk](mailto:amber.darr@ucl.ac.uk)

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