Review of Making Markets Work for Africa (Fox & Bakhoum, OUP 2019)

By:

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September 19, 2019

Prof Eleanor Fox and Prof Mor Bakhoum's book, **Making Markets Work for Africa: Markets, Development, and Competition Law in Sub-Saharan Africa** is a welcome addition to the sparse jurisprudence in this area. The book carefully explores how competition law can be a valuable instrument to achieve economic benefits for developing nations in Sub-Saharan Africa. It sets out the historical, economic and socio-political context within which competition law finds itself and the diverse and challenging conditions in several developing jurisdictions across the region.

The idea of international standards is considered with the awareness that they are, in large measure, actually those of the US and EU. It may be condescending to insist, as happens elsewhere, that these developed country standards are so obviously ideal and most enlightened that they should be imported and transplanted into African soil without further debate. The need for further debate is demonstrated by the in-depth analysis of specific countries'

socio-political conditions. The authors use examples of successful interventions, to show that further debate can produce successful market regulation which can make markets work for the people of Sub-Saharan Africa. The Kenyan example of the resuscitation of the market for pyrethrum flowers shows the broadness of the type of intervention that may be necessary, inclusive of legislative reform outside of competition legislation, to achieve reform of markets to achieve market outcomes informed by competition law.

The book provides helpful examples of the challenges faced in terms of the financial and human capital needs for effective competition law enforcement as well as challenges of corruption and political pressure. Having set out these challenges, the authors document how some countries have very admirably dealt with them, showing how some competition authorities have risen to find effective solutions, making competition law worth much more than the paper it is written on. This is certainly a far cry from when competition law was on the books of certain developing countries purely as a requirement from the World Bank or IMF, without having any firm root in internal economic policy. The book is helpfully organised into categories of development from least developing to developed, with South Africa in a category of its own. It is acknowledged that the differences must be recognised not only between developing and developed nations but also between developing nations themselves as asymmetrical levels of development present different challenges for the implementation of competition law.

The separate treatment of South Africa enables a more detailed examination of aspects of its competition law regime that is, perhaps, unique to it its own level of development. South Africa has an approach to competition matters that is designed to suit the specific conditions of the country. South Africa has had its own unfortunate history, one characterised by race and economic exclusion that required overt economic policies that sought to achieve redress for historical injustices. The competition legislation enacted after the fall of apartheid is intended, among other things, to assist in the progressive realisation of these goals.

The authors show that South Africa follows its own competition law path with the enforcement agency diverging from developed country norms which prize

the achievement of efficient markets as the end-goal, in line with the reasoning that informs developed nation economics. In South Africa, efficiency is relegated from being the sole target of competition enforcement to being one of several factors which include public interest considerations that come to the forefront most spectacularly in merger review. The book contains a helpful review of the key cases in South Africa adjudicated upon by the competition authorities and how public interest issues have been dealt with.

It is further shown that while the attempts to establish a global competition law order have proved futile and are likely to remain fruitless for some time, there has been considerable success at establishing non-peremptory unity through bodies such as the International Competition Network and the African Competition Forum. Through such initiatives, progress is made towards the laudable target of converging towards common principles of competition law.

The value of regional integration and collaboration on competition is canvassed by the authors to show how joint efforts and sharing resources at regional levels can be very useful to advancing the cause of competition law. The authors helpfully point out that regional approaches need to be configured with care so as not to have a chilling effect on the national competencies of competition authorities – as demonstrated by the WAEMU's pre-emption provisions, indeed a double edge sword! Institutional design is therefore still an important piece of the puzzle. This points to the challenge which this book addresses; it has become more necessary to advance a common understanding of competition law principles and enforcement as economic activity has spread with disregard for borders.

It is a careful balancing act that must be achieved by competition agencies and governments as well as the people for whom they work. While South Africa is lauded as a shining example of a competition law regime that accounts for the various factors that must be balanced for a developing economy, it too, has not been without its challenges. There exists the possibility of over-prioritisation of non-competition factors at the expense of the promotion of competition. It may be helpful to debate further just how far the agenda can be pushed without diluting core competition concerns and the achievement instead of various unintended consequences. Perhaps this is worth looking at in further editions of

this book as South Africa has currently implemented into law various additional public interest provisions over and above the merger review provisions. One of the triumphs of this book is that it is presented in simple and accessible language and will appeal to those interested in competition law jurisprudence in most developing jurisdictions, not just Sub-Saharan Africa. Having regard to the innumerable and diverse challenges of developing countries, one thing is quite clear, there is no one-size-fits-all approach to competition law. Prof Fox and Prof Bakhoum have set out a well-reasoned and persuasive text on how competition law can be a useful instrument to make markets work in Sub-Saharan Africa. As they point out, it is important to listen to the voice of Africans if this is to be achieved.

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