Book Review of Fox and Bakhoum, Markets, Development, and Competition Law in Sub-Sub-Saharan Africa

By:

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In Africa, the enforcement of competition law is made more difficult by the lack of literature to guide practitioners and enforcers in their work. There is generally limited literature on competition law in developing countries. Even though a growing number of countries have adopted competition laws in this vast continent, until now Africa has been ignored. The lack of scholarship focusing on developing countries in general and Africa in particular leads to greater focus on the competition law systems of West, predominantly those of the US and Europe. The consequence of this is that most literature hardly addresses the challenges of competition policy and enforcement from a developing country perspective. Eleanor Fox and Mor Bakhoum's book therefore fills a big gap in the literature on competition law and policy in Africa. The book, however, holds lessons for developing countries more generally, and

even those in developed countries interested in a progressive understanding of competition policies. In their *tour de force* of the continent of Africa, the authors expand the frontiers of competition law without sacrificing its core value.

The book is a rich source of knowledge and research in understanding how competition law and policy has been adopted and is enforced in selected countries in Sub-Saharan Africa. It provides the socio-political context and challenges to competition policy in Africa. The central thesis posited in the book is that competition law and policy can contribute towards making markets work for development – creating pro-development markets. In this sense, the book is also critical of the approach followed in the US, which departed from the original view of competition policy as a tool for the downtrodden, and that gives opportunity to the marginalised to constrain corporate market power. It calls for a fundamental departure from the narrow focus of the Chicago School in competition economics, which it traces from the Reagan years in the US.

The book provides illuminating insights on the contrasting historical and economic imperatives that drove the development of competition law and policy in the US, post World War II Europe and in selected countries on the African continent. The authors explain that in the US, the development of antitrust law was a response to the industrial revolution and in its wake, large enterprises. For almost a century, the US courts, interpreted antitrust law “to protect the weak from the strong.” There was a significant shift in US antitrust law under the Reagan administration “away from economic democracy and towards efficiency” as the US focused on global competitiveness and economic power. Post World War II Europe adopted competition law “as a necessary underpinning of the common market.” In Europe, competition was adopted as apart of the package of initiatives to support peace and economic integration after the ravages of World War II.

The story of the evolution of competition law is different for the African continent. Competition law in several countries on the African continent was adopted largely in the epoch following the collapse of the Berlin Wall and as a prescription of the Washington consensus. The authors point out that a number of important historical events combined to trigger the adoption of competition law in several countries on the African continent. These included the

conclusion of the Uruguay trade round in 1994 and the Asian financial crisis of 1998, which devastated a number of developing economies. These countries were forced to turn to the International Monetary Fund and the World Bank for financial assistance. These international financial institutions insisted on loan conditionalities that included adoption of competition law. In addition, the US and the EU require partners in trade agreements to adopt competition laws.

The book closely examines how selected countries in Western Africa, Eastern and Southern Africa have crafted the transition from colonial economies to economic-liberalising reforms, including competition law and policy, as a result of influence from the World Bank and the IMF as part of structural adjustment programmes, with varying degrees of success. The outcomes are interesting and varied. The authors point out that in French West Africa, characterised by a history of dirigiste (state-controlled) economic systems, the patterns and trends of competition law and policy still reflect vestiges of state intervention, particularly on pricing. Competition law enforcement in West Africa is limited and there is no merger control law.

In contrast, Eastern and Southern African countries did not inherit a dirigiste economic system and were better positioned to adjust to market-oriented reforms. The book gives a glimpse on the institutional make-up and challenges of enforcement in various regions of the continent. It observes that some agencies have done very well, even as they are confronted with various challenges including lack of adequate resources.

Their take on South Africa is both encouraging and courageous. They observe that the system has matured into one of the most outstanding and even pathbreaking in the developing world. While they commend the work of the authorities, they nevertheless point to some challenges. They for an example, decry a tendency by courts towards “a more technical judicial path, often on grounds that the language of the law does not permit the social policy overlay.” They equally credit South African jurisprudence for introducing values of inclusiveness and reasonable simplicity. The book also touches briefly on the proposed amendments to the South African competition legislation, which address inclusivity issues more robustly.

The book examines in greater detail regional arrangements which occupy a greater part of African competition policy. Most regional organisations are motivated by benefits in trade, not competition. The competition project must fit within the trade mandate. The authors argue that the African Competition Forum has a strong potential to provide a base of collaboration and coordination of competition law and policy across Africa and to support a competition voice for Africa in the world.

The book also examines appropriate framework for competition law nationally and internationally. The authors highlight the significant qualitative differences in economies and needs and capabilities that may call for different law and policies. Lastly, the book examines how markets can be made to work for developing countries.

The strength of this book lies in the author’s freedom from any competition law ideological stranglehold, which allows them to explore beyond its often-unnecessary limits. For this, it is essential reading for policy makers, enforcers, practitioners and students wanting an outside of the box view of competition policy. In many ways, they remind us of the original idea behind competition law, which idea finds resonates in the African continent.

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