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Introduction

A growing international interest in policies to promote or defend competition is accompanying globalization of markets. This reflects in part the increased market orientation of government policies—as these are substituted for government planning and intervention—and the growing recognition of the key role that competition plays in efficient markets.

'Competition policy' has been defined variously but it has become the shorthand label for a set of competition issues and the related research and policy work in numerous international agencies (including the OECD, WTO and UNCTAD) and country groupings (including EU, CER, APEC and the FTAA). It is not surprising that the WTO in its 1997 Annual Report (WTO, 1997a, Chapter 4) and UNCTAD in its World Investment Report for 1997 (UNCTAD, 1997, Part 2) chose as their themes the relationship between competition policies and, respectively, international trade and foreign direct investment. The international surge of research pertaining to an array of competition issues and policy responses has enormous education value and is contributing to a better understanding of the issues and their implications for business and consumers.

This book is about the promotion of competition in globalizing markets and the role of inter-government cooperation in setting the policy environment for competition. In large part it focuses on concerns about cross-border private business transactions that could interfere with the competitive process as markets are enlarged, but no chapter attempts a review of national or regional laws. This focus reflects the state-of-play internationally and the extensive efforts being made, particularly by international agencies, to address the perceived risk that competition-reducing private conduct could undermine competition-inducing government actions (including trade liberalization and deregulation).

In large part, as a result of US advocacy and the importance attached to competition law in the context of EU membership, there has been a significant adoption of national laws which target anti-competitive business conduct and acquisitions. Many national governments, regional groupings and international agencies see competition law as the principal or ultimate guardian of the competitive process.

When it comes to the international dimensions of 'competition policy' there is a diversity of view among countries. The United States leads the debate but it takes a comparatively narrow view. Itself under attack for its extraterritorial use of anti-trust and its threats of unilateral trade remedies, it has unquestionably helped focus international attention on the potential for cross-border business transactions to interfere with the competitive process.

The US strongly advocates a culture of sound national anti-trust enforcement and, to that end, promotes the sharing of anti-trust experiences, bilateral cooperation/coordination between national anti-trust agencies, and technical assistance for developing economies. The European Union, on the other hand, has been much more inclined to recommend the development of multilateral options. Some economies, notably Singapore and Hong Kong, SAR, are arguing in international fora that a comprehensive national competition law is not an essential feature of an effective consumer-driven competition policy, although limited and flexible regulation in non-tradable sectors may be. Such a policy should, first and foremost, apply competition principles to government actions (including trade remedies and domestic regulations). Markets should be open to all modes of supply.

Competition law is a complex area of policy. It involves decisions on policy objectives and the desired degree of market freedom; the principles to be applied; decisions on the substantive rules and the extent of *per se* prohibitions; decisions on the type and severity of deterrents; and, increasingly, consideration of cross-border business transactions and enforcement. While not every country (developed or developing) has or believes it needs a general law to govern the structure and conduct of commercial activity, proponents of competition law argue that convergence in this policy area will help to harmonize (and keep surveillance of) business conditions in markets that are no longer defined by national or jurisdictional boundaries.

The growing interest in competition law sanctions is something of a paradox in the context of markets becoming more competitive through liberalization of trade and foreign direct investment, deregulation and privatization in many economies, and the development of information technology. Although access to individual economies and foreign consumers has increased, significant barriers to competition in markets clearly remain. It is interesting that the literature largely ignores this paradox. Rather, it tends to take for granted that guardianship of markets via competition law is a necessary accompaniment to trade and investment liberalization and deregulation; and that the risk of anti-competitive business conduct will justify this legal response.

Business, however, as it constantly reorganizes and seeks efficient ways of pursuing opportunities provided by more open and expanding markets, has a legitimate concern that interventions from over-zealous regulators will impede rather than enhance the competitive process, especially in an era of dramatic technological change and speed of change. But increased adoption of the language and principles of *competition* law itself signals a more positive approach to the promotion or defence of competition as traditional trade and other barriers fall. A focus on the promotion of competition—not as an end in itself, but as a means of promoting efficiency—leads to a wider scoping of so-called competition policy. This is clearly desirable.

Internationalizing pro-competition principles necessarily encompasses government as well as private actions affecting competition and efficiency in markets. The private sector is not the only influence on the competitive process and therefore should not be the sole target of so-called competition policy. Governments themselves are engaged in commercial activities, and governments are primarily responsible for the remaining regulations and barriers affecting market entry and effective merit-based competition. Thus, enhancement of competition and efficiency in regional and global markets requires a combination of policy measures to strengthen the overall competitive process and yield efficient and welfare-enhancing outcomes. This requirement becomes the basis for developing a more coherent competition-based framework to guide market-related policy deliberations in both national and multi-national fora and to guide the resolution of economic policy conflict both within and between governments.

We make a significant departure from the common proposition that 'competition policy' warrants attention because it is a new trade-related issue. Our research shows that this proposition is confusing the issues. There is a stand-alone case for policies to promote competition, and widely applied competition principles would make a positive contribution to the development of a policy framework for promoting competition. The objective of so-called competition policy is not to increase or maximize trade without regard to competition, efficiency and welfare outcomes.

It is no coincidence that the title of this book does not contain the terms 'trade', 'competition law' or 'competition policy'. (Indeed, the authors avoid the term "competition policy" unless it has been explicitly used by others.) This reflects the following propositions: (i) competition issues are not simply trade-related; (ii) objectives relating to increased market access for a country's exports, or to increased market share for a country's exports, are not appropriate substitutes for a goal of global welfare via efficient competition in enlarging markets; (iii) considerable confusion surrounds the term 'competition policy': to some it includes a general competition law, to others the term simply equates with competition law, and, to a few, it need not include competition law; (iv) a culture of *competition* needs to be pervasive in policy formation if competition is to fulfil its role as an efficient mechanism for allocating resources; (v) it is just as important that there is a competition dimension in other government policies that impact on markets, as there is in regulation of private business conduct.

Our earlier book was entitled *International Trade and Competition Policy*: *CER*, *APEC and the WTO*. It reviewed the reasons for and the issues arising from the growing prominence of 'competition policy' as a 'new trade-related issue'. This book builds on that research and draws from much new material. It significantly expands coverage of the competition dimension of trade liberalizing groups beyond CER, APEC and the WTO by adding the EU, NAFTA and other economic arrangements that are developing in the Americas. It examines more fully the contributions to debate by the OECD and UNCTAD.

Part One provides an overall analytical framework. Parts Two to Five review and analyse the principal mechanisms for addressing 'competition policy'—bilateral, regional, plurilateral and multilateral. Part Six, entitled 'Emerging Patterns and Principles', assesses the potential of the different mechanisms for shaping a multi-national policy framework governed by sound competition principles. The economic and social desirability of a comprehensive and coherent policy framework for the promotion of competition in enlarging markets is a central theme of this book.