



The Limits of Competition Policy: The Shortcomings of Antitrust in Developing and Reforming Economies (International Competition Law Series)

A.E. Rodriguez, Ashok Menon

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Antitrust is a blunt instrument aimed at the wrong problem. So say the authors of this provocative and contentious book, both of them well-known for providing antitrust support and training in many developing economies and for serving as antitrust experts on behalf of private parties targeted by antitrust authorities. Drawing on their wide experience, they describe how antitrust/ competition rules in developing economies curtails innovation and entrepreneurship under what the U.S. Supreme Court has blasted as the chilling effects of false positives. Moreover, they point out, entrenched interest groups in developing countries quickly discover that soliciting preferential treatment from the state, which leads to state-sponsored non-tariff barriers, is more attractive than private cartelization, not least because it is perfectly legal and thus beyond the reach of antitrust law enforcement efforts.

What the authors offer is a thoroughgoing analysis clearly demonstrating that, whatever economic path developing countries pursue, imposing Western-style antitrust regimes will engender uncertainty, chill economic behaviour, and foster an unhealthy climate for business. They employ the influential error-cost methodology to appraise the performance of competition policy and to show how such a policy creates irresolvable tensions in fragile economies with weak institutions--economies characterized by informal rules of business practice, long-standing symbiotic business state relationships, and unpredictable state action. They mount a powerful critique of the arguments of neo-institutionalists (who fail to recognize the vulnerable nature of emerging market economies) and competition advocates (who presume to stand ready and vigilant to enforce competition policy on state entities). But competition policy in developing economies is not an irremediable mistake. Such regimes need not adhere to an inappropriate Western model, the authors maintain, to find cheaper and more effective ways to foster competition. As a detailed and insightful description and framework defining the limits to antitrust in developing (and especially least-developed) countries, this study promises to extend the debate that should precede any consideration of globally extending competition policy in its current version. Crafters of policies and rules in competition law and administration cannot fail to gain in depth of understanding from this new approach to the subject.



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