Global Competition: Law, Markets, and Globalization by David J. Gerber, Oxford University Press, Oxford 2010, pp. 350,
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David J. Gerber is a distinguished Professor of Law and Co-Director of the Program in International and Comparative Law at the Chicago-Kent College of Law, USA. Since the first publication of his book "Law and Competition in Twentieth Century Europe", Professor Gerber stands out as a well-known expert in the international antitrust community.

In his new book "Global Competition: Law, Markets, and Globalization" the author now examines competition law and its application on a global scale. The book consists of three major parts. Part I provides an overview over the attempts to establish a coherent global competition law in the 20th century. Part II presents national competition regimes explaining how and to what extent local regimes were able to evolve and shape competition law globally. Part III analyzes strategies and pathways to improve a coherent legal framework for competition law on a global level. One advantage of the book is that the three parts can be read independently of each other according to the reader's specific interest.

Part I is largely historic and constitutes an insightful and joyful read for any scholar, practitioner and government official active in the area of competition law. The author depicts two failed attempts to harmonize competition laws that are largely forgotten today by the international antitrust community: the World Economic Conference of 1927 in Geneva and the Havana Charter after World War II.

According to the author, rapid re-industrialization, together with high levels of uncertainty about the future of international trade, fostered the emergence of international cartels in the post-World-War-I-period. Businesses perceived cartels as a means to minimize risks and by 1925 had become a prominent feature of international cross-border economic activity. Behind this background, the League of Nations decided to organize a major international conference on international trade in Geneva in 1927. The primary focus of the Geneva Conference was the elimination of tariffs as a barrier to trade, but private barriers, such as cartel-type activities, were seen by many as similarly important. The author portrays the more common view at the Geneva Conference that cartels resulted in both benefits and harms to the world economy and that 'good' cartels could be distinguished from 'bad' cartels. Where cartels were operated responsibly with a view to the various stakeholders, such as workers, they were considered to be socially useful. If, however, cartels were used to maximize profits at the expense of consumers, workers and the down- and upstream markets, they were considered an evil to be combated. During the Geneva Conference, the idea that the international community should not accept cartels and establish a legal regime to effectively deter cartels gained wider support. Ultimately, the Geneva Conference called

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for the League of Nations to collect information on international cartels, monitor their activities, investigate their effects and publish information on harmful conduct.

Equally interesting is the author's description of the likewise failed attempt to establish an International Trade Organization providing basic competition rules binding for all ratifying countries after World War II. At the time, due to the political, military, and economic dominance of the United States, the establishment of a normative legal order for competition law on a global level was a realistic possibility. The Havana Charter contained a section on restrictive business practices and, according to the author, was widely accepted as a necessary part of the international trading order. It embodied the fundamental rationale that international trade and exchange was to be promoted, and that private practices amounting to barriers to international trade should be combated. Ultimately, President Truman decided not to submit the so-called Havana Charter to Congress for ratification and the International Trade Organization did not come into existence. The author stresses that the motivation for stopping the ratification was not related to competition law but was based on other geo-political considerations.

Part II focuses on national competition laws explaining how and to what extent national competition laws were able to evolve and shape competition law on a global scale. It covers the United States and Europe and less extensively, Japan, South Korea, China, Latin America and Sub-Sarahan Africa. This part is not meant to be encyclopedic and does not assert to be comprehensive. Despite the high number of jurisdictions, the author manages to paint a colorful picture of each of them.

Particularly worth reading is the section on the so-called law and economics 'revolution' in the United States beginning in the Seventies of the last century. For non-US lawyers, the speed and radicalism of the change has always been breathtaking. The author puts the 'revolution' in context. He illustrates the various factors that enabled and accelerated the process. One central theme was the cost imposed by US antitrust laws on US enterprises in comparison to other jurisdictions. Behind this background, two propositions were central to the 'revolution', according to the author. One was that economics should provide the basis for antitrust law and that any law not supported by economics should not be sustained. The second proposition was that a certain school within economic theory should be followed. This is usually referred to as the Chicago School which is based on neoclassical economic theory. Applied in antitrust law, this perspective claims that the sole legitimate function of antitrust is to deter conduct that restricts output or tends to increase prices. While the actual implementation of these ideas has always remained somewhat controversial even among economists, its fundamental tenets have become mainstream antitrust thinking worldwide.

In another section, the author warns against the one-to-one adoption of US antitrust laws as a model for other jurisdictions. For various reasons, US antitrust laws have long been considered as a surrogate for an international competition law framework. In recent years under the Bush administration, the United States practically stopped enforcement of antitrust laws, at least with respect to unilateral behavior. For this reason, using US precedents in defense of dominant companies before foreign competition authorities is generally difficult today. Based on my experience, foreign government officials will reject US precedents in this instance for the very reason that the United States is not a strong enforcer anymore. At the same time, it is the European

Commission that may be accused today of targeting US companies in key industries by imposing huge fines, such as in the Intel or Microsoft Cases.

The author's description of the German resistance and skepticism against the strengthening and expansion of European competition law is very enlightening. In the post-World-War-II-period, competition law had quickly gained a significant role in economic, political and legal life of West Germany. According to the author, the great success was attributable to three factors. First, the great and widespread support of competition law in German society; second, the language and structure of the Antitrust Statute whose language is sufficiently abstract enough to set the policy but at the same time specific enough to allow effective implementation by courts and the Federal Cartel Office, which, thirdly, was quickly able to establish itself as a strong competition authority.

In Part III, the author repudiates convergence as a path to global competition law. For him, convergence can narrow down certain differences among some states on certain points of law and thus, can facilitate the exchange of ideas and information. Still, the author stresses that convergence may not be able to reduce the number of conflicts between jurisdictions. In addition, it may not be capable of achieving a sufficient degree of deterrence against anti-competitive conduct nor is it by itself a guarantee that convergence will be sustainable and ever-growing. Instead, he proposes a flexible multilateral agreement under which the obligations accepted by each State are tailor-made. The author uses the term commitment pathway, which, according to the author, is a normative framework increasingly defined and shaped over time. The basic idea is that States commit to a set of objectives and a process for moving forward those objectives depending on the specific needs, legal culture and economic stage of development of each State. This approach may seem surprising for practicing competition lawyers and may face strong resistance. Yet, due to the built-in flexibility of the approach, the difference to a convergence model may, in practice, be negligible.

All in all, Professor Gerber's book can be highly recommended for all scholars, government officials and practitioners interested in the nature and enforcement of competition laws.

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