Reviews of Recent Antitrust Books (2006-2008)

Spencer Weber Waller

Professor and Director
Institute for Consumer Antitrust Studies
Loyola University Chicago School of Law

The following is a compilation of book reviews and notices of notable books I have prepared over the past three years as U.S. Book Review editor for the World Competition Law & Economics Review and for the web site for the Institute for Consumer Antitrust Studies at Loyola University Chicago. All are short, none are deeply analytical. However, they all highlight recently published work that addresses different needs of the academic and practicing bar, and even includes a book or two of general interest to antitrust professionals. This is not intended as a comprehensive list of publications in the field but rather those that crossed my desk and appealed to me enough to delve into sufficiently to review in summary form. In particular, time did not permit me to study all the new publications by the ABA Antitrust Section or all the new casebooks and new editions of existing casebooks to prepare reviews except where noted. The reviews are arranged by date of publication and include:

1) EINER ELHAUGE, UNITED STATES ANTITRUST LAW AND ECONOMICS (Foundation Press 2008); EINER ELHAUGE & DAMIEN GERADIN, GLOBAL ANTITRUST LAW AND ECONOMICS (Foundation Press 2007).

2) HANDBOOK OF ANTITRUST ECONOMICS (Paolo Buccirossi ed. The MIT Press 2008)

3) EDWIN ROCKEFELLER, THE ANTITRUST RELIGION (Cato Institute 2007)

4) THOMAS K. MCGRAW, PROPHET OF INNOVATION: JOSEPH SCHUMPETER AND CREATIVE DESTRUCTION (The Belknap Press of Harvard University Press, 2007)

5) WILLIAM H. PAGE & JOHN E. LOPATKA, THE MICROSOFT CASE: ANTITRUST, HIGH TECHNOLOGY, AND CONSUMER WELFARE (The University of Chicago Press 2007)

6) ABA SECTION OF ANTITRUST LAW, INTELLECTUAL PROPERTY AND ANTITRUST HANDBOOK (2007)

7) GARY MYERS, THE INTERSECTION OF ANTITRUST AND INTELLECTUAL PROPERTY: CASES AND MATERIALS (Thomson/West 2007)

8) ANTITRUST POLICY AND VERTICAL RESTRAINTS (Robert Hahn, ed. AEI, Brookings Joint Center for Regulatory Studies 2006)

9) WILLIAM C. HOLMES, ANTITRUST LAW HANDBOOK 2007 EDITION (Thomson/West 2006);

WILLIAM C. HOLMES & DAWN E. HOLMES, ANTITRUST LAW SOURCEBOOK FOR THE UNITED STATES AND EUROPE 2007 EDITION (Thomson/West 2006)

10) REZA R. DIBADJ, RESCUING REGULATION (State University of New York Press 2006).

11) KY P. EWING, JR., COMPETITION RULES FOR THE 21ST CENTURY: PRINCIPLES FROM AMERICA'S EXPERIENCE (2d ed. Kluwer Law International 2006).

12) ABA SECTION OF ANTITRUST LAW, THE MERGER REVIEW PROCESS: A STEP-BY-STEP GUIDE TO U.S. AND FOREIGN MERGER REVIEW (3d ed. 2006); ABA SECTION OF ANTITRUST LAW, PREMERGER COORDINATION: THE EMERGING LAW OF GUN JUMPING AND INFORMATION EXCHANGE (2006); JOINT VENTURES: ANTITRUST ANALYSIS OF COLLABORATIONS AMONG COMPETITORS (2006).

The Reviews

1) EINER ELHAUGE, UNITED STATES ANTITRUST LAW AND ECONOMICS (Foundation Press 2008); EINER ELHAUGE & DAMIEN GERADIN, GLOBAL ANTITRUST LAW AND ECONOMICS (Foundation Press 2007).

Professor Einer Elhauge of Harvard Law School has followed up his co-authored 2007 casebook on *Global Antitrust Law and Economics* (with Damien Geradin) with a solo authored 2008 casebook focused solely on the United States. *United States Antitrust Law and Economics* is basically the U.S. material from the earlier book, with the EU items stripped out, and updated for new developments since the publication of the earlier book.

The *Global Antitrust* casebook was a prodigious accomplishment, probably the first casebook to fully integrate US and EU cases and other international material in a US style casebook. By virtue of fully integrating both comparative materials and substantial economic analysis, it was more than 1200 pages long and thus posed a challenge for a teacher of a traditional one semester American law school antitrust course. If one attempted to teach all, or even most, of the material, it quickly became a tradeoff of coverage for depth of analysis. If one attempted to cut out sections, one bore the risk of sacrificing some of the unique strengths of the book.

Professor Elhauge solves this issue by creating a more compact 700 page casebook focused solely on US antitrust which should work well for the teacher of the basic antitrust course who is not inclined to include comparative and foreign competition material in the introductory course. In comparison, the *Global Antitrust* book seems to work better for a two semester course or a teacher who also teaches a follow up course on EU competition law.

Not surprisingly, both books have the same structure and much the same content as to the US antitrust laws. They begin with an extensive introductory chapter dealing with the framework of

the basic economic issues and an overview of the laws and remedial structures. Detailed chapters follow on horizontal agreements, unilateral conduct, vertical arrangements, proving agreement or concerted action, and mergers. The *Global Antitrust* book supplements these materials with extensive EU cases, guidelines, commentary, and a chapter on conduct that spans multiple markets. Neither book contains extensive material on price discrimination, but each discusses the topic briefly in the unilateral conduct and vertical arrangements sections. The merger chapter goes the furthest beyond the cases to include extensive excerpts from the relevant guidelines, notices, and commentary. Both books contain excellent questions and notes to guide the class discussion and go beyond the cases themselves.

Together they provide two useful options for teachers depending on the scope and length of the course they seek to teach. In law, as in architecture, sometimes less is more.

2) HANDBOOK OF ANTITRUST ECONOMICS (Paolo Buccirossi ed. The MIT Press 2008)

Paolo Buccirossi of the competition consulting firm LEAR has assembled an all-star team of 24 economists from the US and the EU[1] for a new *Handbook of Antitrust Economics* to examine some of the key economic issues facing competition policy makers. The Handbook is organized into seventeen chapters preceded by an introduction by the editor. The first five chapters cover virtually all aspects of the economics of merger policy. The next five chapters cover different aspects of cartel agreements and other horizontal and vertical agreements. Following chapters on abuse of market power and price discrimination, the volume concludes with five more specific case studies of competition issues affecting network industries, intellectual property rights, two-sided markets, auction markets, and state aid controls.

The chapters represent a sophisticated, but even-handed, look at the issues in question and include an overview of the existing literature. Controversies and disagreements tend to be highlighted and discussed openly rather than papered over or ignored. Most of the chapters contain basic mathematics, but few are beyond the capabilities of an experienced legal practitioner in the field.

Issues of monopolization and abuse of dominance are relatively underplayed given the more thorough treatment of the other issues covered in the collection. Despite this minor caveat, this is a most valuable volume as both a starting place and a review of key issues in antitrust economics.

---

[1] A full list of the authors can be found at http://mitpress.mit.edu/catalog/item/default.asp?ttype=2&tid=11509&mode=toc.

3) EDWIN ROCKEFELLER, THE ANTITRUST RELIGION (Cato Institute 2007)

There is nothing that Ed Rockefeller likes about the antitrust laws. Not prohibitions against price fixing, monopolization, attempted monopolization, mergers, tying, exclusive dealing, or price discrimination. He views them all as "gaseous concepts that permit unpredictable results based on hunch or whim." (22). Like several other libertarian critics, he would simply abolish the field as interfering with the free market and producing no demonstrable societal benefits other than a community of professional true believers who profit from its practice. The author's faith seems reserved for unfettered laissez faire market fundamentalism, which is itself subject to stronger and more demonstrable criticisms in terms of not serving the public interest. While there is much in the book that is simply undocumented and over the top, it points out correctly many of the discretionary decisions that are made out of the public limelight, and without much explanation, as antitrust evolves away from law enforcement and towards a regulatory model. The book is also useful in challenging us to return to first principles in order to think deeply about what we do, why we do it, and how we promote the public good.

4) THOMAS K. MCGRAW, PROPHET OF INNOVATION: JOSEPH SCHUMPETER AND CREATIVE DESTRUCTION (The Belknap Press of Harvard University Press, 2007)

Most competition lawyers are familiar with the phrase "creative destruction" and the economist Joseph Schumpeter who coined the term in his 1942 book *Capitalism, Socialism and Democracy*. However, few of us are as knowledgeable as we should be about his vast body of work and the extraordinary life that he led prior to leaving Europe to join the economics faculty at Harvard.

Pultizer Prize winning business historian Thomas K. McGraw has produced an enjoyable and eminently readable biography of the life and work of Schumpeter that is an excellent starting point for anyone wanting a greater understanding of one of the most significant economists of the twentieth century whose ideas are being used in different ways in modern debates about both antitrust and intellectual property.

McGraw draws on a variety of archival materials to trace the life of Schumpeter from his birth in small town Austria in 1883, through a nomadic existence with his widowed mother, and then as an academic wunderkind in Viennese higher education and society. What follows is a brief stint as finance minister in post-World War I Austria, a meteoric rise and fall as an investment banker, and a return to academic economics first in Germany and then in the United States where he stayed at Harvard for the remainder of his career and life. Throughout the biography, McGraw traces the potential connections between Schumpeter's frequent personal upheavals with Schumpeter's academic themes of innovation, entrepreneurship, change, and growth as well as the heart breaking effects of his tragic loss of wife, child, and mother in less than a year's span.

In addition to chronicling Schumpeter's personal journey, the focus of the biography remains

firmly fixed on the work and the ideas of the economist who staunchly defended democracy and something approaching laissez faire capitalism from the intellectual and political challenges of both Marxism and the growing appeal of Keynesian macroeconomics. He was one of the few economists who focused on growth and change and the importance of innovation and entrepreneurs rather than being primarily concerned with questions of static equilibria. He also was a great synthesizer of economics, history, and sociology in a grand style that has sadly fallen out of favor in modern economics. Although his work was full of contradictions, and often contained the kind of hidden normative assumptions that he would criticize in others, Schumpeter's writings remain highly influential as antitrust continues to wrestle with questions of dynamic versus static efficiency, the role of innovation, and the best way to incorporate such concerns in competition law and policy. This biography is a wonderful introduction for anyone pondering such questions and wanting to know more about the life and work of the man who brought such questions to the forefront of economic debate.

5) WILLIAM H. PAGE & JOHN E. LOPATKA, THE MICROSOFT CASE: ANTITRUST, HIGH TECHNOLOGY, AND CONSUMER WELFARE (The University of Chicago Press 2007)

The second generation of antitrust scholarship about Microsoft has begun. The first generation was more descriptive, more sensational, less analytical, or simply too early to tell the complete story.[2] In fact, the best of the lot turned out to have played an integral role in the case, since the trial judge in the U.S. had granted the author undisclosed interviews while the case was pending.[3]

Two thoughtful U.S. law professors have now taken a more analytical and highly critical look at the antitrust proceedings against Microsoft in the U.S., the E.U., and elsewhere and concluded there is much less there than meets the eye. Professors Page and Lopatka have built on their prior law review scholarship about the case and produced a detailed critique of the basis, conclusions, remedies, and real world effect of the now more than a decade-long antitrust litigation against the operating system and application software provider.

---

[2] *See e.g.*, JOEL BRINKLEY & STEVE LOHR, U.S. V. MICROSOFT (2001); RICHARD B. MCKENZIE, TRUST ON TRIAL: HOW THE MICROSOFT CASE IS REFRAMING THE RULES OF COMPETITION (2001); JOHN HEILEMANN, PRIDE BEFORE THE FALL: THE TRAILS OF BILL GATES AND THE END OF THE MICROSOFT ERA (2001); DAVID B. KOPEL, ANTITRUST AFTER MICROSOFT : THE OBSOLESCENCE OF ANTITRUST IN THE DIGITAL ERA (2001); JEFFREY A. EISENACH AND THOMAS M. LENARD, COMPETITION, INNOVATION AND THE MICROSOFT MONOPOLY: ANTITRUST IN THE DIGITAL MARKETPLACE (1999).

[3] KEN AULETTA, WORLD WAR 3.0: MICROSOFT AND ITS ENEMIES (2001). As a result of this and other undisclosed contacts with members of the press, the Court of Appeals excoriated the district court judge for acting in this fashion and disqualified that judge from further involvement with the case. United States v. Microsoft Corp, 253 F.3d 34, 107-11 (D.C. 2001).

Their basic contention is that the series of public monopolization (and abuse of dominance) cases against Microsoft may have benefitted competitors, but have not benefitted consumers. After a survey of the history of public monopolization cases in the U.S. and the origins of the Microsoft case itself, they begin with a most helpful chapter describing the various public and private antitrust litigation against Microsoft in the U.S., the contrasting arguments of the parties, the court decisions, the settlements that ensued, and the relief that was granted. The EU and Korean cases are discussed in much more cursory fashion.

The authors continue with separate and detailed chapters analyzing the contrasting claims of the parties and the conclusions of the tribunals as to relevant markets, anticompetitive practices, and remedies. Throughout they are fair minded in presenting the arguments of both parties, but ultimately skeptical as to the basic narrative of the government case (as accepted by the courts) that Microsoft had market power over computer operating systems or used any such power to illegally stifle the growth of middleware that was a nascent threat to that power. They ultimately conclude: "Experience over the course of a century indicates that the public monopolization case is often counterproductive or does little that the market itself would not accomplish at lower cost." (243).

Of course, time marches on and a number of important events have occurred after the completion of the book sometime in early 2007. In the U.S., the consent decree between Microsoft, the federal government, and certain of the states has been extended until 2009. More significantly, the EU Court of First Instance has upheld the European Commission decision against the company and the Commission has imposed additional penalties for Microsoft's alleged failure to comply with its original decision. While the final word has not been written on this critical set of issues, Page and Lopatka have staked their ground as skeptics to the value of lengthy and complex antitrust enforcement against allegedly dominant firms in general and Microsoft in particular.

6) ABA SECTION OF ANTITRUST LAW, INTELLECTUAL PROPERTY AND ANTITRUST HANDBOOK (2007)

Intellectual property (IP) issues have been at the heart of most leading discussions of antitrust policy in the United States of late. IP issues were a prominent feature of the recent report of the Antitrust Modernization Commission[4] and the more focused joint report by the Antitrust Division of the Justice Department and the Federal Trade Commission.[5]

---

[4] Antitrust Modernization Commission, Report and Recommendations (April 2, 2007), *available at* http://www.amc.gov/report_recommendation/amc_final_report.pdf .

[5] U.S. Department of Justice & Federal Trade Commission, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition (April 2007), *available at* http://www.usdoj.gov/atr/public/hearings/ip/222655.htm.

Appearing almost simultaneously is the ABA Antitrust Section's *Intellectual Property and Antitrust Handbook*. It is a concise one volume analysis of the principal antitrust issues involved in the creation, acquisition, use, licensing, and transfer of IP rights under U.S. antitrust law.

It begins with an introductory chapter describing the general principles of U.S. patents, copyrights, trademarks, and trade secrets, followed by a similar broad brush overview of antitrust law and enforcement. The book continues with a chapter on the history of the treatment of IP issues in antitrust cases, beginning with the early cases establishing almost per se legality for any anticompetitive restraint in a license agreement, to the near per se illegality of the nine non-nos of the early 1970s,[6] and then the modern era when intellectual property concerns may again be trumping competition analysis. Next follows a chapter on the antitrust economics of intellectual property.

The book provides its most detailed analysis in three separate chapters discussing the antitrust issues of intellectual property agreements, the unilateral use of intellectual property rights, and the antitrust issues in mergers involving intellectual property. The discussion throughout is comprehensive and balanced, presenting the controversies without taking sides. This approach is best illustrated in the sections discussing the proper standard for reviewing so-called "reverse payments" in the settlement of patent litigation and whether the refusal to license intellectual property rights by a monopolist should ever be the basis for antitrust liability.

The handbook then switches from law to enforcement and concludes with chapters on IP issues in antitrust litigation and the equally critical question of counseling clients. The counseling chapter is structured around a series of questions for clients, a particularly effective technique used in a handful of other recent ABA publications. Appendices include a copy of the 1995 Antitrust Division and FTC antitrust enforcement guidelines for the licensing of intellectual property and a very interest bibliography of articles on the economics of intellectual property/antitrust issues.

This is a solid and valuable reference book for an area of the law which should remain in the eye of the antitrust hurricane for many years to come.

7) GARY MYERS, THE INTERSECTION OF ANTITRUST AND INTELLECTUAL PROPERTY: CASES AND MATERIALS (Thomson/West 2007)

Thomson/West has published what appears to be the first U.S. style casebook devoted to the intersection of antitrust and intellectual property law. Professor Gary Myers of the University of Mississippi School of Law has edited a comprehensive casebook for use in a course or

---

[6] Bruce B. Wilson, Dep. Ass't Att'y General, Remarks Before the Fourth New England Antitrust Conference, Patent and Know-How License Agreements: Field of Use, Territorial, Price and Quantity Restrictions (Nov. 6, 1970).

seminar focusing on this critical area of competition law.[7]

The book begins with an introduction to general antitrust principles and then follows with the 1995 Justice Department/FTC Intellectual Property Guidelines in their entirety. What follows are a series of chapters consisting of well-edited cases and notes and questions for class discussion. Part II focuses on issues relating to single firm conduct including licensing practices, tying arrangements, refusals to deal, exclusion of competitors, and fraud in procuring and enforcing patents. Part III examines concerted behavior involving intellectual property rights including cartels, patent settlements, pooling, cross-licensing, standard setting, joint ventures, and mergers. Part IV focuses on vertical agreements including exclusive dealing, territorial restrictions, field of use restrictions, and resale restrictions. Professor Myers concludes with a series of special topics in Part V including an all too brief section on international and comparative issues. The casebook includes a full supplement of the relevant antitrust and intellectual property statutes so no separate document supplement is needed.

The challenge for a book of this sort is to provide students who have had one, but not both classes, enough explanatory material to be able to meaningfully explore the intersection of both bodies of law. My intuition is that Myers's book will work better for students with an antitrust background than for intellectual property students who have had no past exposure to antitrust principles. The U.S. focus of the book will also require substantial supplementing for use outside of a U.S. law school. None of this should take away from a well-done casebook that is the first real set of published teaching materials in an area of competition law that will only grow in importance as the information and technology economy continues to evolve.

8) ANTITRUST POLICY AND VERTICAL RESTRAINTS (Robert Hahn, ed. AEI, Brookings Joint Center for Regulatory Studies 2006)

This slim but elegant volume contains the principal papers from a May 2005 conference held by the AEI (American Enterprise Institute)-Brookings Joint Center for Regulatory Studies. This conference is the continuation of a series of impressive conferences and publications in the antitrust and regulation fields conducted by these two distinguished research institutes.[8] Although the introduction by Robert Hahn focuses on the centrality of vertical restraints generally in antitrust policy, the three chapters that follow focus on the appropriate standards for bundling and tying. Bruce Kobayashi examines the economic literature and case law on bundling and concludes that insufficient attention has been paid to the efficiency explanations and rejects any bright line rules to deal with the pro- and anti-competitive aspects of this ubiquitous

---

[7] *See e.g.*, U.S. Department of Justice and the Federal Trade Commission, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition (April 2007).

[8] See http://www.aei-brookings.org.

practice.[9] Dennis Carlton and Michael Waldman dispute the Chicago school claim that monopolist have no incentive to tie essential goods.[10] They conclude that monopolists have exclusionary reasons to do so from a long term perspective or where switching costs for durable good make consumers vulnerable. Nonetheless, the authors acknowledge the efficiency-based reasons and ambiguous welfare implications for tying and argue for a high evidentiary rules for tying cases. Finally, David Evans argues for the rejection of the limited per se rule governing tying and the adoption of a full rule of reason analysis as part of the ongoing modernisation of U.S. antitrust policy.[11] Together, these papers reflect a cogent contemporary snapshot of the continuing interplay between economic theory and legal precedent in U.S. antitrust.

9) WILLIAM C. HOLMES, ANTITRUST LAW HANDBOOK 2007 EDITION (Thomson/West 2006)
WILLIAM C. HOLMES & DAWN E. HOLMES, ANTITRUST LAW SOURCEBOOK FOR THE UNITED STATES AND EUROPE 2007 EDITION (Thomson/West 2006)

The annual Antitrust Law Handbook is a sophisticated one volume treatise and research tool that has been around for twenty years. The author, a veteran of both the Federal Trade Commission and private practice, comprehensively surveys the substance and procedure of U.S. antitrust law and produces a separate companion volume with the relevant legislation, regulations, guidelines, block exemptions, treaties, and notices for both the United States and the European Union.

In the Handbook itself, Holmes provides a litigation perspective on the principal antitrust statutes in the United States as well as exemptions, immunities, and litigation procedures. Each annual Handbook begins with a chapter on recent developments. Holmes then devotes separate chapters to anticompetitive agreements under Section 1 of the Sherman Act; monopolization, attempted monopolization and conspiracies to monopolize under Section 2 of the Sherman Act; price discrimination under Section 2 of the Clayton Act (the Robinson-Patman Act); tying and exclusive dealing under Section 3 of the Clayton Act; mergers, acquisitions, and joint ventures under Section 7 of the Clayton Act; unfair competition under Section 5 of the Federal Trade Commission Act; antitrust exemptions and immunities; and litigation procedures.

The text is comprehensive for a one volume work and is heavily annotated with case citations. Each chapter also contains a bibliography for those in need of additional research sources from

---

[9]Bruce H. Kobayashi, *Two Tales of Bundling: Implications for the Application of Antitrust Law to Bundled Discounts*, in ANTITRUST POLICY AND VERTICAL RESTRAINTS at 10 (Robert W, Hahn, ed 2006)(ANTITRUST POLICY).

[10] Dennis W. Carlton & Michael Waldman, *Why Tie an Essential Good?*, in ANTITRUST POLICY, *supra* note 2 at 38.

[11] David S, Evans, *Tying: The Poster Child for Antitrust Modernization*, in ANTITRUST POLICY, *supra* note 2 at 65.

the secondary literature. The Handbook is obviously more compact than either the Areeda Hovenkamp treatise[12] or the ABA Antitrust Law Developments[13] and still is quite analytical. The treatment of exemption and immunities as well as litigation procedures is a bit more cursory in the final two chapters, but those are vast subjects that deserve discussion in any book, but require full volumes on their own to do them justice. The companion Sourcebook is a handy collection of primary public record documents and quite a useful tool when one needs a hard copy one stop reference to the necessary laws, guidelines, and regulations.

10) REZA R. DIBADJ, RESCUING REGULATION (State University of New York Press 2006).

Reza Dibadj, a law professor at the University of San Francisco, takes a close look at the traditional debates over regulation and seeks to move beyond the dichotomy between efficiency and justice. He argues that a law and economics approach to regulation does not have to amount to an apology for laissez faire and moreover can be a path to address social inequities and abusive market behavior.

Professor Dibadj addresses seven key questions about any regulatory regime which form the core for each of the chapters in his book:

1) What were the original justifications for regulation?
2) How were those justifications abandoned and why?
3) Where does the regulatory status quo leave us as a society?
4) Were conventional economists correct in rejecting regulation?
5) What is the new economic research telling us?
6) How can we create better regulatory law that accords with logic and technological and economic reality?
7) How should we reform our regulatory institutions?

The author has read widely and deeply about all forms of regulation and regulated industries. He focuses on challenging the assumptions and policy outcomes of both the rational choice and the Chicago school of law and economics. He finds the key to better regulatory policy in a variety of post-Chicago economic approaches ranging from core theory, behavioral economics, and network effects in new-economy industries. Antitrust principles are never far from the surface in his analysis of where more traditional forms of regulation have succeeded or failed and where we can do better.

Professor Dibadj concludes with both substantive and institutional suggestions for reform. For social regulation, he suggests a more meaningful form of cost/benefit analysis geared to better

---

[12] PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW (2d ed. 2000).

[13] ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS (5th ed. 2002).

quantifying the benefits of certain forms of government action. In economic forms of regulation, he suggests regulatory agencies focusing on gaining access to "bottlenecks," something most directly addressed in US antitrust law under the essential facilities doctrine. Finally he suggests various ways for reinjecting the "public" back into the "public interest," ranging from more targeted legislative mandates to agencies to reform of corporate and securities law. On the institutional side, he favors "developing carefully circumscribed public agencies capable of addressing specific market failures ex ante, while subject to limited delegations of duty." (p. 114).

Rescuing Regulation covers an immense amount of ground succinctly and makes a cogent argument that a meaningful economic approach to regulation means something more than just anything goes in the market.

11) KY P. EWING, JR., COMPETITION RULES FOR THE 21ST CENTURY: PRINCIPLES FROM AMERICA'S EXPERIENCE (2d ed. Kluwer Law International 2006).

In 2000, Ky Ewing published the first edition of his book discussing the challenges of proliferating global competition regimes. Written at the very birth of the International Competition Network ("ICN"), Ewing argued for the convergence of 21st century competition policy around eight principles:

1) Focused Purpose;
2) Rigorous Factual Examination;
3) Rigorous Evaluation of the Competitive Process;
4) Avoidance of Presumptions;
5) Minimalist Intervention;
6) Accountability;
7) Transparency; and
8) Humility (1st edition p. 225).

In my review of the first edition, I wrote: "Competition Rules for the 21st Century reflects a lifetime of practice and thinking about the nature of competition and how governments can improve or injure the competitive process through their actions. Regardless of whether one agrees with the philosophy or the specific conclusions, the book is quite successful as a wonderful conversation (or polite argument) with a learned and devoted friend of competitive markets."

The second edition adds the many developments of the past five years, principally the work of the ICN and the continuing growth in anti-cartel enforcement and cooperation. Ewing uses the wealth of new data and surveys now available electronically through the ICN and other internet resources to continue to argue his basic theme that the world has much to learn from the experiences and the mistakes of US antitrust law since the passage of the Sherman Act. He adds

many new examples from the past few years and includes a wealth of new primary information in his appendices. His eight principles have now grown to eleven and include: Balancing Good and Bad Effects, and Long and Short-Term Interests, with the Costs of Government Intervention; Non-Discrimination; and the Need to Regularly Re-evaluate Policies. It remains a source of wisdom and pleasure.

12) ABA SECTION OF ANTITRUST LAW, THE MERGER REVIEW PROCESS: A STEP-BY-STEP GUIDE TO U.S. AND FOREIGN MERGER REVIEW (3d ed. 2006); ABA SECTION OF ANTITRUST LAW, PREMERGER COORDINATION: THE EMERGING LAW OF GUN JUMPING AND INFORMATION EXCHANGE (2006); JOINT VENTURES: ANTITRUST ANALYSIS OF COLLABORATIONS AMONG COMPETITORS (2006).

The Antitrust Section of the American Bar Association has published in 2006, among many other offerings, three highly practical and useful volumes that together provide an integrated analysis of the U.S. antitrust law, guidelines, and policy governing most aspects of mergers, acquisitions, and joint ventures.

The new third edition of *The Merger Review Process* is an updated and expanded version of the excellent prior editions and covers the U.S. antitrust risks of all stages of a transaction from planning to clearance. The first half of the book covers in treatise format the antitrust clearance process for a merger or acquisition under federal and state antitrust law with an emphasis on the federal antitrust review. After a brief background chapter laying out the relevant statutes, the enforcement agencies, the review process, and the confidentiality considerations, the handbook devotes detailed separate chapters to the antitrust issues in the negotiation of the transaction and the preparation of the Hart-Scott-Rodino premerger notification; the initial waiting period; responding to a second request; dealing with the agencies after a second request; differences in the process for a non-reportable transaction; third-party involvement in the merger investigation; and resolution without litigation. The second half of the book consists of forty seven appendices containing the relevant statutes, guidelines, agency statements, and numerous valuable sample documents related to the clearance process. Both the text and the appendices make this handbook an easy and comprehensive one volume guide to the field.

The question of premerger coordination (also called gun jumping) is key for virtually any transaction. Businesses are anxious to understand each other's business strategy and prospects and enjoy the fruits of the transaction as soon as possible. However, any exchange of information and business coordination prior to antitrust clearance is fraught with antitrust peril. Yet, court decisions are few, and even the handful of enforcement actions and the resulting consent decrees are often so highly fact and situation specific that future prediction and counseling is difficult.

Premerger Coordination helps fill this gap through its comprehensive coverage of the issues and its unique format. After surveying the law of premerger activity under each of the

applicable statutes, the handbook provides a summary of premerger coordination enforcement actions and their outcomes in the United States and in a much more cursory fashion for other jurisdictions around the world. This is followed by an extensive and invaluable series of questions and answers covering many of the anticipated situations that can arise during due diligence, the crafting of the merger agreement, the waiting period, and even post closing. Each issue and analysis is supported by citations to the relevant cases, consent decrees, government guidelines, and relevant statements by government officials. This is a well crafted source of learning on an intricate area of law in a highly user friendly style.

A useful companion is the *Joint Ventures: Antitrust Analysis of Collaborations Among Competitors*. This is a relatively brief introduction to a topic that is potentially even broader than the field of mergers and acquisitions. Because a joint venture can be defined broadly to encompass any collaborative undertaking in which two or more undertakings devote resources to pursue a common objective, joint ventures potentially fall under any and all of the US antitrust statutes. A full treatise on joint venture would thus be as deep and broad as a full treatise on the antitrust laws themselves.

The scope of the new *Joint Venture* handbook is less comprehensive than its companions, but nonetheless valuable as a starting place for research in the field. It reviews the predominant types of joint ventures which raise antitrust concerns, the general antitrust statutes, the more specific statutes dealing directly with joint ventures, and the government guidelines governing counseling in the area. The handbook then discusses the rule of reason as the primary standard governing legitimate joint ventures and the important *Copperweld* decision[14] which requires an agreement between two economically independent actor for the application of Section 1 of the Sherman Act. The heart of the handbook is the final two chapters which discuss the antitrust issues in joint venture formation and the reasonableness of collateral restraints imposed on the joint venturers.

Together all three handbooks provide real world guidance to an important and complicated area of antitrust law where there is much confusion, little case law, and the need for accurate sophisticated counseling grows daily.

[14] Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984).