

Contents

<i>List of Maps, Figures, and Boxes</i>	<i>page</i> xvii
<i>List of Tables</i>	xix
<i>Preface</i>	xxi
<i>List of Abbreviations</i>	xxxv
<i>List of Authorities</i>	xxxvii
<i>List of Statutes and Statutory Instruments</i>	xlvii
1 The Theoretical Framework	1
1.1 Introduction	1
1.2 The Theoretical Pillars	2
1.2.1 Legal Transplant Literature: The Clue is in the Context	2
1.2.2 Policy Diffusion and Transfer: Bringing a Method to the Spread	7
1.2.3 New Institutional Economics: Bridging the Gap between Process and Outcome	13
1.3 Constructing the Integrated Framework	15
1.3.1 The Life Cycle of a Statute	15
1.3.2 Adoption and Implementation: A Stepwise Enquiry of the Literature	16
1.3.2.1 Step 1: Setting the Stage	16
1.3.2.2 Step 2: Tracing the Process	16
1.3.2.3 Step 3: Evaluating the Outcome	17
1.3.3 The Framework of Analysis	19
1.4 Compatibility, Legitimacy, and the Interplay of Institutions	20
1.4.1 The Nature of Compatibility	21
1.4.2 The Dimensions of Legitimacy	22
1.4.2.1 Understanding Legitimacy	22

1.4.2.2	Significance of Legitimacy	23
1.4.2.3	Generating Legitimacy	24
1.4.3	Compatibility and Legitimacy: Two Sides of the Same Coin?	26
1.5	The Framework in Action	26
2	Adoption of Competition Laws in India and Pakistan	28
2.1	Introduction	28
2.2	India and Pakistan: The Pre-conditions of Transfer	29
2.2.1	1969: India Adopts its First Anti-monopoly Legislation	29
2.2.2	1970 Pakistan: Promulgating the Anti-monopoly Ordinance	31
2.2.3	The Context at the Time of Adopting Modern Competition Legislation	32
2.2.3.1	The Indian Legal and Political Landscape in 2002	32
2.2.3.2	The Pakistani Scenario in 2007	32
2.3	Initial Adoption in India and Pakistan: Motivations, Mechanisms, and Institutions	34
2.3.1	Motivations for Acquiring Modern Competition Legislation	35
2.3.1.1	Domestic Self-reflection and Needs-Assessment in India and Pakistan	35
2.3.1.2	Impact of International Developments on Competition Legislation in the Two Countries	36
2.3.2	Mechanisms and Institutions at the Adoption Stage in India and Pakistan	37
2.3.2.1	The Deliberation Phase: Between the Raghavan and the World Bank-Led Committees	38
2.3.2.2	Formal Enactment of Competition Laws in India and Pakistan	39
2.3.3	Transfer Mechanisms and Interplay of Institutions in Adoption	40
2.3.3.1	India: A Case of <i>Socialisation</i>	40
2.3.3.2	Pakistan: A Study in <i>Coercion</i>	41
2.4	Adoption Continues: Amending the Indian and Pakistani Competition Laws	43
2.4.1	Amendments to the Indian Act	43
2.4.2	Pakistan: Two Ordinances and an Act	45
2.4.3	Evolution of Indian and Pakistani Adoption Strategies	45

2.5	Indian and Pakistani Competition Legislation: An Unexpected Outcome?	46
2.5.1	<i>Socialisation</i> and the Content of the Indian Act	47
2.5.2	The Effects of <i>Coercion</i> in Pakistan	49
2.5.3	The Effects of <i>Emulation</i> and <i>Regulatory Competition</i>	52
2.6	Compatibility and Legitimacy of the Indian and Pakistani Competition Regimes	52
3	The Spread of Competition Laws across South Asia	55
3.1	Introduction	55
3.2	A Competition Tour of the South Asian Six	56
3.2.1	Countries That Have Completed the Adoption Stage	56
3.2.1.1	Sri Lanka and the Consumer Affairs Authority Act 2003	57
3.2.1.2	Nepal's Competition Promotion and Market Protection Act 2063, 2007	58
3.2.1.3	Bangladesh Enacts the Competition Act 2012	59
3.2.1.4	Maldives' Competition Act 2020	60
3.2.2	Countries still in the Adoption Stage	61
3.2.2.1	Enactment Interrupted: Afghanistan and the Draft Competition Act	61
3.2.2.2	Bhutan: To Enact or Not to Enact?	61
3.2.3	Adoption of competition laws in the South Asian Perspective	62
3.3	Pre-conditions of Transfer and the Adoption Process in the South Asian Six	63
3.3.1	Democracies and the Adoption of Competition Legislation	63
3.3.1.1	The Sri Lankan Context	68
3.3.1.2	Bangladesh's Efforts to Adopt an Enlightened Legislation	69
3.3.2	Adopting Competition Laws in Former Monarchies	72
3.3.2.1	The Context in Nepal	72
3.3.2.2	Maldives and Competition Legislation for a Small economy	73
3.3.3	Competition in Hard Places: The Context in Afghanistan and Bhutan	75
3.3.3.1	Afghanistan: Between the Draft and its Enactment	76
3.3.3.2	Bhutan: Too Small for Competition?	76
3.4	Transfer Mechanisms and Patterns across South Asia	78
3.5	Compatibility, Legitimacy, and the Potential for Success of the adopted legislation	80

4	Enforcing Indian and Pakistani Competition Acts: An Overview of the Authorities and their Operations	84
4.1	Introduction	84
4.2	The Indian and Pakistani Competition Enforcement Authorities	86
4.2.1	CCI and CCP: their Structures, Mandates, and Compositions	86
4.2.1.1	Structures: The Limits of Independence	86
4.2.1.2	Mandates and Powers of the Authorities	87
4.2.1.3	Composition of the Authorities	88
4.2.2	Types of Enforcement Orders that the CCI and CCP may Issue	89
4.2.3	How do the CCI and CCP Decide? Issuing Orders at the Authorities	90
4.3	Achieving the Benchmarks of Success in the Indian and Pakistani Contexts	92
4.3.1	Enforcing Competition Laws: Pathways Prescribed for CCI and CCP	92
4.3.2	Interventions in the Competition Enforcement Pathways	94
4.3.3	The Pathways and the Benchmarks of Success	96
4.4	Measuring the Performance and Interaction of Competition Statutes	97
4.4.1	Orders of CCI and CCP as Data for Evaluating Benchmarks of Success	98
4.4.2	The Relevant Indicators and their Significance	99
4.4.3	Analysing the Indicators as Per the Orders of the CCI and CCP	100
4.5	Evaluating the Indicators in the Adoption–Implementation Continuum	109
5	Anti-competitive Agreements and Interpretive Strategies in India and Pakistan	114
5.1	Introduction	114
5.2	Establishing Anti-competitive Agreements in India and Pakistan	115
5.2.1	The Test for Anti-competitive Agreements in the Indian Act	115
5.2.2	Establishing Anti-competitive Agreements under the Pakistani Legislation	117
5.2.3	How the Adoption Processes shaped the Tests for Anti-competitive Agreements	119

5.3	Cartels and other Horizontals: The First Decade of the CCI and CCP	120
5.3.1	CCI and Agreements <i>Presumed</i> to be Anti-competitive	120
5.3.1.1	The Confusion that was the <i>Indian Banking Association</i> Case	120
5.3.1.2	An 'Agreement' under the Indian Act	121
5.3.1.3	Interpreting the Presumption of AAEC	123
5.3.2	Interpretive Challenges for the CCP	125
5.3.2.1	Defining the 'Agreement'	125
5.3.2.2	Between the 'Object' and the 'Effect'	126
5.3.2.3	CCP's Analytical Steps for Horizontal Agreements	128
5.3.3	Evolution of CCI's and CCP's Approach towards Anti-competitive Agreements	130
5.4	Vertical Agreements under the Indian and Pakistani Acts	131
5.5	Relating CCI and CCP's Interpretive Strategies to their Adoption Processes	137
5.5.1	Reliance on Models from Which Analytical Tests Were Derived	137
5.5.2	Continued Recourse to Transfer Mechanisms Employed in the Adoption Process	138
5.5.3	Impact of Adoption Processes on the Evolution of CCI and CCP's Interpretive Strategies	138
6	Understanding Penalties in the Context of the Adoption Process	142
6.1	Introduction	142
6.2	Adoption Process and Penalties: Understanding the Two-Pronged Impact	143
6.3	Direct Impact: CCI and CCP's Approach towards Penalties in their Orders	144
6.4	Indirect Impact: The Role of Competition Enforcement Systems	148
6.4.1	Establishing the Competition Enforcement Systems in India and Pakistan	148
6.4.2	Tribunals and the Recovery of Penalties	151
6.4.3	Beyond Penalties: Competition Enforcement Systems and Competition Jurisprudence	160
6.5	Adoption Processes, Penal Strategies, and Competition Enforcement	165

7	Pre-existing Legal Systems and Competition Enforcement	167
7.1	Introduction	167
7.2	Mapping the ‘Interactions’ in the Indian and Pakistani Contexts	168
7.3	‘Interactions’ in India and Pakistan	172
7.3.1	Interaction between CCI and the General Courts	172
7.3.2	CCP’s Interim Orders and Challenges before the General Courts in Pakistan	176
7.3.3	The Divergence in the Indian and Pakistani Experience: Are Court Systems Responsible?	180
7.4	Adoption Processes: Another Explanation for the Interactions	182
7.4.1	Engagement of the Judiciary in the Indian and Pakistani Adoption Processes	183
7.4.2	The Interplay of the Executive and the Legislature in the Adoption Process	185
7.4.3	The Adoption Process and the Divergence in Interactions	187
7.5	Competition Enforcement Systems, Interactions, and Enforcement	188
8	Implementing Competition Laws across South Asia	191
8.1	Introduction	191
8.2	Revisiting the Indian and Pakistani Experience	192
8.2.1	The Adoption Stage and Generation of Compatibility and Legitimacy	192
8.2.2	Impact of Compatibility and Legitimacy on the Implementation Stage	194
8.2.3	Compatibility and Legitimacy and the ‘Hiatus’ between Adoption and Implementation	196
8.3	The Implementation Experience of the Remaining South Asian Countries	198
8.3.1	Adoption Processes and Compatibility and Legitimacy in the South Asian Six	198
8.3.2	Implementing Competition Legislation in the South Asian Six	202
8.3.2.1	Sri Lanka: Consumer Welfare at the Cost of Competition	202
8.3.2.2	Nepal: To Enforce or Not Remains the Question	204
8.3.2.3	Bangladesh: Is Competition Forgotten?	205
8.3.2.4	Maldives: too early for implementation	206

8.3.2.5	Bhutan even policies matter	206
8.3.2.6	Afghanistan ensuring competition without a law	207
8.3.3	Links between Adoption and Implementation in these Countries	207
8.4	The Hiatus Stage: Opportunity to learn from the Indian and Pakistani Experience	210
8.5	Patterns of Competition Diffusion and Transfer and Enforcement in South Asia	214
9	Bridging the Implementation Gap	218
9.1	Introduction	218
9.2	The Development Imperative	220
9.2.1	Economic Profiles and Challenges of South Asian Countries	220
9.2.2	Do Multi-lateral Packages of Economic and Institutional Reform Address Development?	222
9.2.3	Adapting Competition Legislation for Economic Development	224
9.3	Competition in the Digital Age	226
9.3.1	The State of E-commerce in South Asia	226
9.3.2	Digital and E-commerce Policies in South Asian Countries	228
9.3.3	Competition Regulation, the Digital Economy, and E-commerce	233
9.4	Regional Developments and Competition Law Enforcement	237
9.5	Possible Implementation Strategies for South Asian Countries	240
	<i>Bibliography</i>	243
	<i>Index</i>	255

