CONTENTS

Preface page xvii
List of abbreviations xx

1 Introduction 1

1.1 The Middle East in geographic terms 1
1.2 Geographical coverage of the book 2
1.3 The global significance of the Middle East 3
1.4 Sharpening the focus 3
1.5 The foundations of competition law and policy in the Middle East 4
1.6 The five issues 4
1.6.1 Foreign direct investment 5
1.6.2 Economic growth and poverty 6
1.6.3 Corporate governance 7
1.6.4 Institutional structure and design 8
1.6.5 Competition advocacy 9
1.7 Regional cooperation: past, present and future 12
1.8 Relationship with the European Community 15
1.9 Relationship with EFTA States 17
1.10 A book on competition law and policy in the Middle East 17

2 The relationship between Islam and competition law and policy 18

2.1 The relationship: a myth or reality? 18
2.2 Setting the scene: competition law and Islamic roots 19
2.3 The role of competition law and policy in an economy 20
2.4 Competition law and policy in an Islamic economy 21
2.4.1 The Quran 21
2.4.2 The source of EJtihad 22
2.5 The role of competition law in Islam: 
the components 23
2.5.1 The value of trade and competition 23
2.5.2 Pricing practices and policies 24
2.5.3 Abuse of dominance and collusion 26
2.6 Enforcement: the principle and institution of Hisba 27
2.6.1 The origins of Hisba 28
2.6.2 The institutional structure of Hisba 29
2.6.3 Expansion and demise of Hisba 30
2.6.4 Hisba Bill in Pakistan 31
2.7 Conclusions 33

3 Israel: the region’s oldest competition law 34
3.1 The origins of competition law in Israel: 
the 1959 Law 35
3.2 From the 1959 Law to the 1988 Law and beyond 37
3.3 The path towards effective enforcement 39
3.4 The treatment of different business phenomena: 
scope and limitations 41
3.4.1 Restrictive arrangements 41
3.4.1.1 Definition 41
3.4.1.2 Cartels 45
3.4.1.3 Vertical agreements 46
3.4.1.4 Registration, authorisation and 
individual exemptions 47
3.4.1.5 The block exemption mechanism 50
3.4.2 Monopolies and monopolists 53
3.4.3 The regulation of mergers 55
3.5 Institutional structure 58
3.5.1 The Israel Antitrust Authority 58
3.5.2 The Restrictive Business Practices Tribunal 60
3.5.3 The Exemptions and Mergers Committee 61
3.5.4 Minister of Industry, Trade and Labour 61
3.5.5 Other bodies and individuals 62
3.6 Orders and penalties 62
3.7 Role of third parties 63
3.8 Competition advocacy 64
3.9 International outlook and activities 66
3.9.1 Consulting foreign experiences 66
3.9.2 Participation in international organisations 67
3.9.3 Links with the EC and the EFTA States 68
3.9.4 Cooperation with the USA 69
## Table of Contents

3.10 Reflections 70

3.10.1 Ex ante regulation v. competition 71

3.10.2 The problematic government/business relationship 72

3.10.3 Gaps in the Law 72

3.10.3.1 Adaptation to a restrictive arrangement 72

3.10.3.2 The block exemptions 73

3.10.4 The issue of discretion 74

3.10.5 Protecting competitors 75

3.10.6 Non-competition considerations 75

3.10.7 Should the 1988 Law be replaced? 76

4 Turkey: a European dream from the other side of the border 78

4.1 Arriving at the competition law scene: economic, political and social dynamics 78

4.2 The Law on the Protection of Competition 81

4.2.1 Aims, scope and nature 82

4.2.2 Collusion 84

4.2.2.1 The concerted practice presumption 85

4.2.2.2 The treatment of vertical agreements 87

4.2.2.3 Exemptions 88

4.2.3 Abuse of dominance 90

4.2.4 Control of concentrations 92

4.3 The Competition Authority and Competition Board 95

4.3.1 Enforcement and fines 96

4.3.2 Appeal and judicial review 97

4.3.3 Competition advocacy 98

4.4 Private enforcement and actions for damages and compensation 101

4.5 Regulatory and supervisory aspects of the regime 101

4.6 The burden and standard of proof 105

4.7 Market entry and barriers to entry 106

4.8 International links within the Middle East and beyond 107

4.8.1 The EC–Turkey association 109

4.8.2 The Turkey–EFTA States Agreement 111
4.8.3 Free trade agreements with MECs
4.8.3.1 Turkey–Israel FTA
4.8.3.2 Turkey–Morocco FTA
4.8.3.3 Turkey–Palestine FTA

4.9 Reflections
4.9.1 Social, economic and political issues
4.9.2 Following the EC model
4.9.3 The Association and Customs Union Agreements
4.9.4 Achievement and progress of the authority
4.9.5 The strict time frames
4.9.6 General deficiencies
4.9.7 The Law and free market
4.9.8 Future directions

5 The Arab Maghreb countries
5.1 Algeria: replacing draconian legislation with a mechanism for consultation
5.1.1 Competition Ordinance 2003
  5.1.1.1 Aims, objectives and scope
  5.1.1.2 Pricing activities and policies
  5.1.1.3 Influence of EC competition law
  5.1.1.4 Non-competition considerations
5.1.2 The role of the Competition Council
  5.1.2.1 The council’s relationship with other regulators
  5.1.2.2 Penalties and sanctions
  5.1.2.3 Judicial supervision
5.1.3 International openness and cooperation
5.1.4 Comments
5.2 Morocco: a strong desire for modernisation
5.2.1 Western style: linking with the EC and EFTA
  5.2.2 The Law on the Freedom of Prices and Competition
    5.2.2.1 The scheme of the Law
    5.2.2.2 Free pricing and price regulation
    5.2.2.3 Consumer protection
    5.2.2.4 Conducting investigations
    5.2.2.5 Transparency between professionals
    5.2.2.6 Limitation of supply
5.2.3 The relevant authorities
  5.2.3.1 The Competition Council
  5.2.3.2 The Commission for Price Supervision
5.2.3.3 The Central Committee 143
5.2.3.4 The courts 144
5.2.3.5 Sectoral regulators 144
5.2.4 Penalties 144
5.2.5 Reflections 148
5.3 Tunisia: a pioneer in the Arab world 149
5.3.1 Extensive web of international associations 150
5.3.2 Developing a competition law framework 152
5.3.3 The Competition and Prices Act: goals, scope and underlying policies 153
5.3.3.1 Aims and objectives 153
5.3.3.2 Scope of the Act 154
5.3.4 Enforcement: relevant authorities, powers and discretion 157
5.3.4.1 The Competition Council 157
5.3.4.2 The Minister of Trade 160
5.3.5 Price transparency 160
5.3.6 Reflections 161
5.4 Libya: a new policy of unlimited competition 163
5.4.1 The change 163
5.4.2 Unique style of administration 164
5.4.3 Liberalisation, privatisation and WTO accession 164
5.4.4 A possible competition law for Libya 166
6 Jordan’s 2004 Competition Law 168
6.1 International outlook and cooperation 169
6.1.1 Jordan–EC Association Agreement 170
6.1.2 Jordan–EFTA Free Trade Agreement 170
6.1.3 Jordan–Israel-US QIZ Agreement 171
6.2 The Competition Act 172
6.2.1 The failure of the 1990s and the success of 2002 172
6.2.2 The aims of the Act 173
6.2.2.1 Anti-competitive practices 174
6.2.2.2 Abuse of dominance 175
6.2.2.3 Economic concentrations 176
6.2.2.4 Exemptions 178
6.2.3 Price regulation 179
6.2.4 Fairness of commercial transactions 180
6.3 Institutional structure and the different players 180
   6.3.1 The Competition Directorate 181
   6.3.2 The Committee for Competition 182
   6.3.3 The courts 183
   6.3.4 The role of the Minister of Industry and Trade 184
6.4 Powers and responsibilities 184
   6.4.1 Investigations 184
   6.4.2 Penalties 185
   6.4.3 Competition advocacy 186
   6.4.4 Assessing the performance of the directorate 187
6.5 Market control and supervision 189
6.6 Reflections 190

7 The Gulf States: a possible model for regional cooperation 193
   7.1 Measuring the success of the GCC 194
      7.1.1 Extrinsic factors: the GCC and other regional communities 195
      7.1.2 Intrinsic factors 196
   7.2 International cooperation 196
      7.2.1 Cooperation with the EC 197
      7.2.2 Cooperation with EFTA States 197
   7.3 The Kingdom of Saudi Arabia 198
      7.3.1 Embracing the free-market system 198
      7.3.2 Regulation of prices 199
      7.3.3 The Competition Act 2004 199
         7.3.3.1 Collusion 200
         7.3.3.2 Abuse of dominance 201
         7.3.3.3 Mergers 203
      7.3.4 The Competition Council 204
      7.3.5 Orders, penalties, appeal and private enforcement 205
      7.3.6 Facilitating competition in the sectors 206
         7.3.6.1 The telecommunications sector 206
         7.3.6.2 The electricity sector 207
   7.4 Qatar: the Law on Protection of Competition 2006 207
      7.4.1 Building a competitive environment 207
      7.4.2 The Law on the Protection of Competition 208
         7.4.2.1 The context of the Law and legislative intent 209
         7.4.2.2 Scope of the Law 209
      7.4.3 Enforcement 211
      7.4.4 Orders and penalties 212
7.5 The Republic of Yemen 212
7.5.1 The Competition Law 1999 213
  7.5.1.1 Scope of the Law 214
  7.5.1.2 Collusion, abuse of dominance and harmful concentrations 214
7.5.2 The Competition Authority 216
7.5.3 Penalties 217
7.5.4 An added dimension of regulation 217
7.6 Gulf States with no specific competition law 218
  7.6.1 Bahrain 218
    7.6.1.1 Overview 218
    7.6.1.2 Mergers 219
    7.6.1.3 The telecommunications sector 219
  7.6.2 Kuwait 221
    7.6.2.1 The Investment Law 221
    7.6.2.2 The privatisation programme 222
    7.6.2.3 Competition law and policy developments 223
  7.6.3 Oman 225
    7.6.3.1 The privatisation law and programme 225
    7.6.3.2 Competition law tools 226
    7.6.3.3 The telecommunications sector 227
  7.6.4 United Arab Emirates 229
    7.6.4.1 General 229
    7.6.4.2 Price regulation 231
    7.6.4.3 Turning to competition law 232
    7.6.4.4 Car retail market 232
7.7 Reflections 233

8 The Arab Republic of Egypt: the chase after globalisation 237
  8.1 Creating European links 238
  8.2 Cooperation with the USA: the qualifying industrial zones 239
  8.3 The competition law dilemma 240
  8.4 The Law on the Protection of the Freedom of Competition 242
    8.4.1 The ambitious role of the Act 243
    8.4.2 The scope of the Act 243
    8.4.3 Penalties and fines 245
  8.5 Institutional structure and capacity 246
  8.6 Competition advocacy and international outlook 248
  8.7 A mechanism for price regulation 249
8.8 Cement, steel and telecommunications: from state control to liberalisation 249
  8.8.1 The cement industry: a double-edge sword 250
  8.8.2 The steel industry: abuse of dominance or freedom of competition 252
  8.8.3 The telecommunications sector: the consequences of liberalisation 254

8.9 Deficiencies, criticisms and concerns 255
  8.9.1 The prohibition on horizontal and vertical agreements 256
  8.9.2 The issue of exemption 256
  8.9.3 The treatment of abuse of dominance 257
  8.9.4 Lack of adequate mechanism for merger control 258
  8.9.5 Fines and settlements 259
  8.9.6 The Executive Regulations 259
  8.9.7 The sectoral application of the Act 259
  8.9.8 The frustrating influence of bureaucracy 260

9 Lebanon and Syria: a tale of two states 261

9.1 Lebanon: the walk to the region’s most comprehensive competition law 261
  9.1.1 International openness and economic growth 261
  9.1.2 The drive for privatisation 264
  9.1.3 The process of emerging competition in Lebanese markets 265
    9.1.3.1 Overview 265
    9.1.3.2 The challenges 266
  9.1.4 Existing legal framework for protecting competition 267
  9.1.5 A modern competition law for Lebanon 269
  9.1.6 The scope of the LCA 270
  9.1.7 Institutional structure 272
    9.1.7.1 The Competition Council 272
    9.1.7.2 The rapporteur of competition affairs 273
  9.1.8 Orders and penalties 274
  9.1.9 The public dimension of the LCA 274
  9.1.10 Reflections 275

9.2 Syria: resisting international isolation with international openness 278
  9.2.1 Competition law: paradox, contradictions and conflicts 279
  9.2.2 The thesis of the SCL 281
9.2.3 The scope and goals of the SCL

9.2.3.1 Collusion

9.2.3.2 Abuse of dominance

9.2.3.3 Merger control

9.2.4 Exemptions

9.2.5 The treatment of pricing policies and practices in special cases

9.2.6 Improper exercise of intellectual property rights

9.2.7 Fairness of commercial transactions

9.2.8 Institutional structure and enforcement

9.2.8.1 The Competition Commission

9.2.8.2 The Competition Council

9.2.8.3 The courts

9.2.9 Penalties, remedies and damages

9.2.9.1 Financial sanctions and penalties

9.2.9.2 Penalties imposed on natural persons

9.2.9.3 Settlements

9.2.9.4 Penalties designed for Commission officials

9.2.9.5 Injunctions

9.2.9.6 Damages

9.2.10 Reflections

10 Conclusions

10.1 Competition in Middle Eastern style

10.2 Recognising the value of competition and competition law

10.3 Different forms of competition law but the same competition policy

10.4 MECs without a specific competition law and policy

10.4.1 The Islamic Republic of Iran

10.4.2 Iraq

10.4.3 Palestine

10.4.1.1 The Constitution

10.4.1.2 The development plans

10.4.1.3 Foreign participation and investment

10.4.1.4 The competition law scene

10.4.1.5 Unfair competition

10.4.2.1 The economy and foreign investment

10.4.2.2 WTO membership and privatisation

10.4.2.3 Competition law and policy

10.4.3.1 Aspiring to free-market economy

10.4.3.2 Foreign investment

10.4.3.3 The competition law scene
10.4.4 The Republic of Sudan 313
  10.4.4.1 Foreign investment 313
  10.4.4.2 Economic and structural reform 314
10.5 The chances for sound cooperation 315
  10.5.1 Bilateral cooperation 316
  10.5.2 Regional cooperation: myth or reality? 316
    10.5.2.1 Cooperation through the European Commission 317
    10.5.2.2 Sub-regional cooperation 318
    10.5.2.3 Emerging cooperation within the Arab League 319
      10.5.2.3.1 The prohibitions 320
      10.5.2.3.2 Enforcement and penalties 322
      10.5.2.3.3 Commentary 323
  10.5.3 Comparison with other regions 325
10.6 Competition law: a bridge between civilisations 326

Index 329