

Contents

List o	of Maps, Figures, and Boxes	page xvii	
List of Tables			
Prefa	ice	xxi	
List of Abbreviations			
List o	List of Authorities		
List o	of Statutes and Statutory Instruments	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	



x Contents

	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	2.4
	2.3.1 Motivations for Acquiring Modern Competition	34
	Legislation	2.5
	2.3.1.1 Domestic Self-reflection and Needs-Assessment in	35
	India and Pakistan	35
	2.3.1.2 Impact of International Developments on	55
	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	71
	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 Socialisation	40
	2.3.3.2 Pakistan: A Study in Coercion	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



	Contents	xi
	2.5 Indian and Pakistani Competition Legislation: An Unexpected	
	Outcome?	46
	2.5.1 Socialisation and the Content of the Indian Act	47
	2.5.2 The Effects of Coercion in Pakistan	49
	2.5.3 The Effects of Emulation and Regulatory Competition2.6 Compatibility and Legitimacy of the Indian and Pakistani	52
	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	71
	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



xii Contents

Enfor	eing Indian and Pakistani Competition Acts: An Overview of
he Aı	nthorities and their Operations
4.1 Int	troduction
.2 Tł	ne Indian and Pakistani Competition Enforcement
Αι	uthorities
4.2	2.1 CCI and CCP: their Structures, Mandates, and
	Compositions
	4.2.1.1 Structures: The Limits of Independence
	4.2.1.2 Mandates and Powers of the Authorities
	4.2.1.3 Composition of the Authorities
4.2	2.2 Types of Enforcement Orders that the CCI and CCP may Issue
4.2	2.3 How do the CCI and CCP Decide? Issuing Orders at the Authorities
3 Ac	Phieving the Benchmarks of Success in the Indian and Pakistani
	ontexts
4.3	3.1 Enforcing Competition Laws: Pathways Prescribed for CCI
	and CCP
	3.2 Interventions in the Competition Enforcement Pathways
4.	3.3 The Pathways and the Benchmarks of Success
	easuring the Performance and Interaction of Competition atutes
4.4	4.1 Orders of CCI and CCP as Data for Evaluating
·	Benchmarks of Success
4.4	4.2 The Relevant Indicators and their Significance
4.4	4.3 Analysing the Indicators as Per the Orders of the CCI and CCP
.5 Ev	valuating the Indicators in the Adoption–Implementation
-	ontinuum
	ompetitive Agreements and Interpretive Strategies in India
	akistan
	troduction
	tablishing Anti-competitive Agreements in India and
	kistan
5.2	2.1 The Test for Anti-competitive Agreements in the Indian
	Act
5.2	2.2 Establishing Anti-competitive Agreements under the
	Pakistani Legislation
5.2	How the Adoption Processes shaped the Tests
	for Anti-competitive Agreements



	Contents	X111
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</i>	120
	Association Case	120
	5.3.1.2 An 'Agreement' under the Indian Act	12
	5.3.1.3 Interpreting the Presumption of AAEC	12
	5.3.2 Interpretive Challenges for the CCP	125
	5.3.2.1 Defining the 'Agreement'	12
	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	13
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
	derstanding Penalties in the Context of the Adoption	
	ocess	142
	Introduction	142
6.2	Adoption Process and Penalties: Understanding the Two-Pronged Impact	14:
6.3	Direct Impact: CCI and CCP's Approach towards Penalties in their Orders	
6.4	Indirect Impact: The Role of Competition Enforcement	144
~. T	Systems Systems	148
	6.4.1 Establishing the Competition Enforcement Systems in	**
	India and Pakistan	148
	6.4.2 Tribunals and the Recovery of Penalties	15
	6.4.3 Beyond Penalties: Competition Enforcement Systems and	-5
	Competition Jurisprudence	160
6.5	Adoption Processes, Penal Strategies, and Competition	
	Enforcement	165
		_



xiv Contents

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 7.4.1 Engagement of the Judiciary in the Indian and Pakistani	182
	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	0.0
	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



Contents	XV
8.3.2.5 Bhutan even policies matter	206
8.3.2.6 Afghanistan ensuring competition without a law 8.3.3 Links between Adoption and Implementation in these	207
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	210
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 Institution	
Reform Address Development?	222
9.2.3 Adapting Competition Legislation for Economic Development	22.4
9.3 Competition in the Digital Age	²² 4 226
9.3.1 The State of E-commerce in South Asia	226
9.3.2 Digital and E-commerce Policies in South Asian	220
Countries	228
9.3.3 Competition Regulation, the Digital Economy,	
and E-commerce	233
9.4 Regional Developments and Competition Law Enforcemen	t 237
9.5 Possible Implementation Strategies for South Asian Countrie	s 240
Bibliography	243
Index	255