

**BOOK REVIEW:
"COMPETITION LAW AND PRACTICE"
BY VINCENT POWER
(BUTTERWORTHS)**

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It is easy to run out of superlatives in describing this magnificent and scholarly work by Vincent Power. Other reviewers have described this book as both monumental and magisterial. Running to almost 2,000 pages, it so comprehensively addresses all aspects of competition law as to merit the description of being a Pickwick Papers of legal authorship.

It would certainly be a mistake to think that the book loses anything in relevance or readability because of the passing of the Competition Act, 2002, which took place some months after the publication of this volume. No practitioner can make sense of the new legislation without understanding the philosophy and concepts which underpin competition law, together with the history of the evolution of competition law principles, all of which are admirably dealt with in this book.

It is important to remember that the Competition Act, 2002, is largely mechanical in nature. It eliminates notifications and provides essentially a system of self-assessment for undertakings involved in business agreements and practices. It provides for tougher enforcement measures and additional powers for the Competition Authority where infringements of the Act have occurred. However, the underlying principles remain untouched.

The first part of the book explores the concepts, underlying principles and objectives of competition law. There is a chapter on the economics of competition. This

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introductory part of the book opens with an extended look at the sources of competition law in Ireland, the history of EU competition law and historical development of Irish competition law.

The next part of the book addresses the institutions involved in both EU and Irish competition law, an area which will obviously require some updating, particularly in the realm of mergers, following the Competition Act, 2002.

The next portion of the book is devoted to anti-competitive arrangements, followed inevitably by a section dealing with the abuse of dominance.

The author then usefully devotes some 21 chapters to selected arrangements and practices, which include cartels and market sharing arrangements, trading conditions and discrimination, refusal to supply, which I cite by way of sample of the wide range of areas covered.

There is a separate section dealing with mergers, which undoubtedly requires re-visitation in the light of the Competition Act, 2002. The same comments apply to the section on practice and procedure, given the widespread changes in this area wrought by the new Act.

As practitioners will be aware, the most recent draft of the Regulation on the implementation of the rules in competition laid down in Articles 81 and 82 of the Treaty is dated 26th July 2002 (SN 3238/02) and is scheduled for adoption in November of this year. Not only judges, but practitioners also, are intensely pre-occupied with the implications of the decentralisation proposals at national level. It is perhaps worth mentioning that in September, 2002, an association of European competition law judges was established in Luxembourg to provide a vehicle for the exchange of information and views in relation to the impact implications of the new Regulation. It is hoped to establish a database whereby decisions at national level by judges working in this area will be available to judges of other Member States. It is hoped that this sort of initiative, and perhaps others yet to be implemented, will minimise the risk

of judges in different Member States taking opposing views on, for example, the question as to whether the identical distribution agreement qualifies for an exemption under Article 81 (3). At the Luxembourg meeting, judges from the different Member States expressed considerable unease and apprehension with regard to the decentralisation proposals generally. For example, in what circumstances will the Commission avail of its right to intervene in proceedings before a national court? How will it know when to do so? In Ireland, how could such intervention ever occur in the context of a trial in the Central Criminal Court before a judge and jury? In relation to exemptions, can a national judge attach conditions to the grant of an exemption? What standard of proof, uniform or otherwise, is to be applied when dealing with cases under the new Regulation?

Perhaps some of these fears are groundless but the very fact that a keen need was felt for the establishment of such an association speaks for itself. Given the historical differences between common law and civil law traditions, the different institutional arrangements for the processing of competition law issues and the wide variations in enforcement procedures as between Member States, the potential for difficulty in the implementation of the Regulation is all too apparent.

At a practical level, in the Irish context it remains to be seen if a similar appetite for anti-trust type litigation involving juries exists to anything like the degree that exists in the United States. Where will jurors be found who are willing to serve on a case that may take weeks, if not months, to resolve? How will juries grapple with mixed questions of law, fact and economics?

With all these problems in mind, one is delighted to learn that Vincent Power has in preparation a new volume which will update the legal landscape post-Competition Act, 2002. That volume will surely prove as valuable as the current one, which is an indispensable reference work for all

practitioners who seek to advance their understanding of the modern law of competition.

“Competition Law and Practice”, by Vincent Power (Butterworths, 2001), 1874 pages.