

PTA/Reuters' news telegrams. In 1932 PTA and the Bulletin sued Jaber, the owner of an Arab newspaper that was copying news. The courts ultimately opined that news per se was not copyrightable (as the USSC had done in 1918 case of *INS v AP*).

In Chapter 10 the author demonstrates that the Arab community was markedly slower than the Jewish one in taking to copyright. Of particular note, the Arab community was much less productive in copyrightable works than the Jewish community. In Chapter 11 the author discusses several high-profile copyright disputes toward the end of the Mandate, including one involving rights to Theodore Herzl's writings.

One of the particularly pleasing aspects of this book is its clear and logical structure. Each chapter flows into the next, and the book moves from generalities and abstract discussion of transplants and colonialism in the opening chapters, to discussion of Imperial legislation, Mandate Palestine, and the specifics of new media in the later ones. The author emphasizes that Mandate copyright law was initially ignored, though ultimately very effective. One wonders if rather than being a misfit with the 'recipient', Mandate copyright law was rather a little ahead of its time; residents of Mandate Palestine were busy fighting to create communities and a state – a state which the Mandate power had committed itself to bringing into existence. Perhaps Bentwich was a visionary to whom it was obvious that copyright law would sooner or later be necessary, though at the time there was basically no copyrightable creativity in the jurisdiction. The book's only real weakness is its language. The editing could certainly have been more exacting. The book includes easily missed mistakes such as: 'Statue of Anne' (p. 67) – there may have been a statue of Anne, but the author no doubt meant to refer to the Statute, though other errors jump out of the page.

In conclusion, the author has produced a fascinating book, which – despite the weaknesses in the language – makes a major contribution to the study of Palestine Mandate law specifically, and Imperial copyright law generally. This book should be enjoyed by anyone with an interest in either the history of intellectual property or the legal history of the State of Israel. Finally, anyone exploring the law as a tool of colonialism and other instances of legal transplants will also find this book well worth the read.

ARYE SCHREIBER
SCHREIBER & CO, ISRAEL

Economics for Competition Lawyers. By GUNNAR NIELS, HELEN JENKINS and JAMES KAVANAGH [Oxford University Press, 2011. 640 pp. Paperback £59.95. ISBN: 978-0-19-958851-0.]

UNSUSPECTING readers may be forgiven for implying from the title of the book under review that it is an introductory text digestible by all in the spectrum of legal intelligentsia. It is not and the implication must be dispelled. As noted by Justice Roth in the Forward, the book is not "always easy for the non-economist: the authors do not adopt a simplistic approach, and their sophisticated analysis and exposition inevitably make certain sections a demanding read." This sophistication is a part-reflection of the exemplary credentials of the authors. Niels and Jenkins hold doctorates in economics and

are senior members of Oxera, one of Europe's leading economics consultancies. They have given numerous expert testimonies and all three have extensive advisory experience. None of them are lawyers but they represent as having a "reasonable grasp of competition law in various jurisdictions" (p. 7).

The anatomy of the book is conventional. Tables of cases and legislation and lists of figures and tables open the book followed by eleven chapters. It closes with a bibliography and an index. The chapters fluctuate greatly in length. A short chapter one outlines the role of economics in competition law. It does set the scene for ensuing chapters. The chapter uses the economic naturalist examples to illustrate key economic concepts. Although the authors attempt "to keep the expositions relatively straightforward and to avoid the excessive use of economics jargon" (p. 7), the reviewer is not overwhelmingly convinced that the economic concepts are clearly explained; the explanations were lost within the economic naturalist examples themselves leaving the reader to isolate the economic concepts and to generate a generic definition from these. A glossary of the economic terms used would have been helpful. Notwithstanding, there is no jurisdiction that will not benefit from this scholarly work. But the user is clearly expected to have a substantial knowledge of economics. The book is based largely on European Union jurisprudence and material but this geographic focus must not dissuade the potential non-EU buyer from owning a copy of the book as the subject matter, theories and concepts covered have near universal recognition and relevance. Underpinning competition law are core concepts of "market" and "market power". They receive attention in chapters two and three. The authors lay bare the plenary dimensions to a "market" and highlight the difficulties in defining these deceptively simple twin concepts. Although the theories and interpretations put forward will have global relevance, ultimately however, true application is dependent on a given jurisdiction's statutory framework, its own common law and market structure. By itself, these concepts mean little to the practitioner-operator. It is not, for example, a contravention to have "market power" but does become relevant when it is used for impermissible purposes. Such purposes are traversed in chapters four to seven with appropriate breadth and depth.

A lengthy chapter four analyses abuse of dominance and covers sub-topics of most relevance to virtually any business, particularly retail operations. Although Europe dominates the chapter, the concepts have statutory recognition in many jurisdictions. Conduct such as price discrimination, exclusive dealing, bundling and tying are looked at comprehensively. But it is predation that receives most attention and rightly so; in the words of an Australian federal judge, 'predation' is "one of the more insidious breaches of the [local] Act" (*ACCC v Cabcharge Australia Ltd* [2010] FCA 1261, at [57]). Predatory pricing occurs where an entity supplies goods or services below the relevant cost to that entity for the purposes of damaging or eliminating a competitor. Many interpretative difficulties need to be overcome and this chapter succinctly offers alternative theories and their weaknesses in approaching and assessing the myriad of anti-competitive conduct. For the international reader, the first task would be to equate competition law concepts to local statutory parlance.

Horizontal agreements are looked upon considerably more unfavourably in the marketplace than its vertical counterpart both of which are covered in chapters five and six respectively. The authors dichotomise horizontal agreements into cartels and non-hardcore agreements. The authors recognise the fundamental truism of the difficulty in addressing tacit collusion as there is

often no proof of communication or intent. While economic concepts surrounding horizontal cartels are explained through case studies rather than through academic discourse, the chapter is light on covering the detection of cartels. Chapter five is one of the shortest chapters in the book and could have been well-served with greater depth even if at the expense of other chapters given horizontal agreements has been vividly labelled by the US Supreme Court as “the supreme evil of antitrust” (*Verizon Communications Inc. v Law Offices of Curtis V. Trinko LLP* 540 U.S., 398, 408 (2004)). Chapter six covers vertical agreements such as exclusive dealing and resale price maintenance.

In a volatile world economy, mergers tend to gain traction insofar as two companies will come together hoping to gain a greater market share lest they may not survive alone. The topic occupies chapter seven of the book. Mergers are critical to get right; while there are clear advantages to mergers, the fear is of a substantial lessening of competition. The authors identify the delicate balance poignantly in that regulators must “neither block too many mergers that would have efficiency benefits, nor allow too many deals that enhance market power” (p. 334) and the merged party’s prerogative to increase prices post-merger. The challenge for regulators, therefore, is to adopt an appropriate test for merger clearances. The authors here merely engage in a descriptive analysis of the different tests adopted by various jurisdictions. Competition lawyers will be well-advised to accept the recent lesson from Australia. The Federal Court in *ACCC v Metcash Trading Ltd* ([2011] FCAFC 151), in rejecting a merger block, criticised the Australian Competition and Consumer Commission for investing in economic theories that are involved in counterfactuals. Rather, the focus should be on market realities and hard evidence. Since the defeat, the ACCC has pledged to curb theoretical approaches to how it assesses mergers. The chapter is commendable for its coverage of wide-ranging scenarios presented by mergers including reference to the counterfactual and its ease of read. Economic concepts are employed to a minimum and the resultant language is more digestible for the non-economist competition lawyer. Virtually no mention is made of the sister concept of acquisitions, however.

The final stages of the book cover remedies and quantification of damages. True to the subject matter of the book, economic principles are discussed in the context of the design of remedies. Remedies such as structural and behavioural remedies are evaluated for both their strengths and weaknesses. However, the reader will find pockets of strict theory creeping its way into the chapter with the hope that it does not suffer the *Metcash* demise if introduced into court on the question of remedies. With fines being the leading form of punitive and preventive remedies, the section on fines discusses the obvious questions of how their levels are determined and the in/ability of companies to pay them. Although readers will have their own positions on these questions, the authors cover the landscape well in an unbiased way and will assuredly engage the reader throughout. Chapter ten focuses on the third-party bystander aggrieved by the perpetrator of a competition law breach. They are the most direct and identifiable victim of the perpetration. The chapter is long, detailed and economics-heavy. The authors analyse different approaches such as financial analysis and market structure. The challenge for practitioners is to adopt the most apt approach but they can be assured of one fact: the key question in any damages calculation is to establish the counterfactual hypothetical.

No such book can be complete without a discussion on how economic evidence can and should be presented in court. Chapter eleven covers the use of

economic experts and how courts and civil procedure address disagreements between and reliability of them. The mission is clear: to assist the judge with technical evidence. While the cynosure of attention is on party-appointed experts where reliability gains greater relevance, there is no more than an honourable mention of court-appointed experts. New Zealand, for example, allows lay members to assist the judiciary. The Commerce Act 1986 provides for the appointment of lay members to the High Court for Commerce Act matters to assist judges in particular cases. Lay members play a key role in ensuring that the expert evidence on complex competition issues is properly understood, tested and assessed by the High Court. The authors of the book dismiss this model for reasons not altogether clear, preferring party-appointed experts for reasons not wholly unmeritorious. Scarce literature prohibits a meaningful evaluation of the use of lay members, however.

The reader will undoubtedly accept, having read the book, that law and economics is a complex matter of cross-pollination. In fact, such is the complexity that the analysis of law applying methods of economics is now an entire discipline in law school curricula around the world. Associations and academic centres exist entirely dedicated to this subject. Law reviews and journals publish exclusively in this area. With this in mind, the authors have done an outstanding job in explaining the major areas of competition law although their level of explanation is anything but primary or introductory. As businesses strive or struggle to survive and maximise profits through various strategies in an increasingly competitive world, so too are they testing the elasticity and expanding the frontiers of competition laws. As a result, the challenge, as the authors say, is how to use economic evidence “more effectively”.

NILAY B. PATEL

Basic Documents on International Investment Protection. By MARTINS PAPARINSKIS. [Oxford: Hart Publishing, 2013. 1032 pp. Paperback £52. ISBN 978-1-84946-136-8.]

THIS collection encompasses documents essential for an understanding of the historical background to this area, documents covering international investment protection rules, international investment protection dispute settlement, and other documents relevant for the study and practice of international investment law. The documents relevant to the historical background have been exhaustively collected and includes treaties dating back to 1886. This chapter allows the reader to track changes in important provisions, such as those concerned with full protection and security, expropriation, and fair and equitable treatment over time. Such historical documents are not otherwise readily accessible, even on the internet. It is an impressive, meticulously gathered collection of documents relevant to investor-state disputes.

As for the documents concerned with the rules of international investment protection, Dr Paparinskis has collected a comprehensive range of documents that are regularly needed for the interpretation of treaties, understanding the rules concerning responsibility of states and diplomatic protection, as well as the major multilateral investment protection agreements, such as the Energy Charter Treaty, NAFTA, and others that are more recent. This chapter contains recent bilateral model treaties and relevant investment protection treaties,