

# A COMPETITION POLICY FOR THE WTO

*Philip Marsden*

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To prevent business practices from restricting trade, governments are considering how best to develop a global framework of competition rules. Formal proposals have been made for Members of the World Trade Organisation to undertake binding commitments to ban cartels, co-operate in international law enforcement and enforce their competition laws in a non-discriminatory manner. In this refreshing and highly readable book, however, competition law practitioner Philip Marsden finds that many of these commitments are likely to prove irrelevant, if not actually harmful. They would add nothing to - and could take much away from - commitments that already exist and have precisely the same aim.

Philip Marsden recommends that the discussion and negotiation of competition rules at the WTO focus on the problem that is most relevant to the interaction of trade and competition policy. This is the frequent allegation that competition authorities are tolerating exclusive business arrangements that appear to exclude competitors, and foreign competitors in particular. This allegation was at the heart of the *Kodak/Fuji Film* trade case about access to the Japanese market, and also underlies a continuing difference of view among trade and competition authorities – particularly on either side of the Atlantic – about how successful companies should be allowed to be. Philip Marsden analyses these differences through a colourful and insightful examination of how the European Commission and the American antitrust authorities reviewed the *Boeing/McDonnell Douglas* and *GE/Honeywell* mergers.

He then examines trade policy proposals that have been made to address this divergence. These recommend that WTO Members either change their competition policy analysis to pay more attention to the impact that 'efficient but exclusionary' arrangements have on trade, or simply introduce new regulation to provide foreign companies with an improved position in their markets. Marsden's ground-breaking analysis explains how such changes would pull competition policy away from its core discipline of protecting merit-based

competition, thereby distorting the competitive process and the efficient and equitable operation of the marketplace, *without* providing foreign competitors with the meaningful access to new markets that they so desperately seek.

Marsden concludes by offering a framework of legal and economic reasoning for the review of exclusionary arrangements, and of their toleration by competition authorities, which accords with the aims of both trade and competition policy. This will help the two often conflicting aspects of trade and competition policy to finally work together to address truly harmful business conduct, without depriving truly successful companies of the fruits of their labours. As Lord Brittan says in his Foreword to the book, "*Marsden's thoughtful analysis and original and interesting positive proposals go well beyond current thinking. Competition officials, trade negotiators and dispute settlement panellists as well as academics and the heads of companies that are seeking better access to foreign markets will all find this book absorbing and stimulating. It is based on deep knowledge and study and merits serious consideration and discussion.*"

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## Contents in Brief

Foreword by *The Rt. Hon. The Lord Brittan*

**Chapter I:** Multilateral Competition Rules: the Elusive (and the Extant)

**Chapter II:** The Current 'Competition' Agenda at the WTO:  
Making the Possible Necessary

**Chapter III:** Making the Necessary Possible:  
Examining the Toleration of Exclusionary but Efficient Business Arrangements

**Chapter IV:** Beyond Equality: The Applicability (and Inapplicability) of National Treatment

**Chapter V:** Beyond Antitrust: Market Access and Global Welfare  
Proposals for Reform

**Chapter VI:** The Need for Discipline

**Chapter VII:** A Possible Analytical Framework

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*DR. PHILIP MARSDEN*

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