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# Competition Law in the BRICS Countries

*Editors:*

Adrian Emch,  
Jose Regazzini and  
Vassily Rudomino



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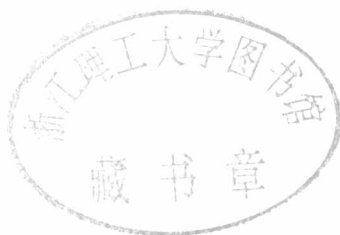
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# About the International Bar Association

## The Global Voice of the Legal Profession

In its role as a dual membership organization, comprising over 45,000 individual lawyers and over 200 Bar Associations and Law Societies, the International Bar Association (IBA) influences the development of international law reform and shapes the future of the legal profession. Its Member Organizations cover all continents of the World.

Grouped into two Divisions—the Legal Practice Division and the Public and Professional Interest Division—the IBA covers all practice areas and professional interests. It provides members with access to leading experts and up-to-date information as well as top-level professional development and network-building opportunities through high quality publications and world-class conferences. The IBA's Bar Issues Commission provides its Member Organizations with substantive and social programs at and between meetings and the IBA Human Rights Institute (IBAHRI) works across the Association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

The Antitrust Committee provides an international forum for the exchange of the most current thinking in the field of antitrust law. In addition, there is a strong commitment to bring together international practitioners to facilitate closer working relationships. The committee is increasingly relied upon by government officials and members of the private sector for its expertise and practical input into antitrust developments.

The Antitrust Committee forms working groups to study major international competition policy issues and to submit comments to regulators on proposed new and reformed legislation. The Antitrust Committee also works with the Global Forum for Competition and Trade Policy Committee and the Trade and Customs Law Committee to form the Antitrust and Trade Law Section. The Committee meets at the IBA Annual Conference and also has a specialist antitrust conference each year, together with regular seminars and events organized by the Committee's local country chairs.

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Thomas is an officer on the IBA's Antitrust Committee. He has spoken and published on a variety of EU competition law topics and is co-consulting editor of *Getting the Deal Through: Dominance*, a guide to the regulation of dominant firm conduct in 39 jurisdictions worldwide.

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Professor Kovacic was a member of the faculty at the George Mason University School of Law from 1986 to 1999. From 1983 to 1986, he practiced antitrust and government contracts law with Bryan Cave's Washington, DC, office. Earlier in his career, he spent one year on the majority staff of the U.S. Senate Judiciary Committee's Antitrust and Monopoly Subcommittee.

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In 2009, he was called to the Bar in London and is a tenant at Monckton Chambers. He has served as an acting judge on the South African bench.

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Fruitful efforts have been made by Mr. Ning on the drafting and developing China's competition law system. He has participated in the drafting of the Anti-Unfair Competition Law and the Anti-Monopoly Law, and several important regulations including six supportive regulations to the Anti-Unfair Competition Law and four supportive regulations to the Anti-Monopoly Law. He has masterly skills in the theory and rich experience in the enforcement of competition law. He organized several investigations of significant and typical cases in the fields of anti-unfair competition and anti-monopoly.

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## Foreword

One of the most significant and interesting developments in international competition policy in recent years has been the increasing cooperation between the BRICS countries. The IBA has been pleased to be involved in this process as a non-governmental organization since it was invited for the first time to participate at the conference organized by the Russian Federal Anti-Monopoly Service in Kazan in 2009. The ambitious scope of this project became clear at that conference. It served as a timely reminder of a fundamental change in the focus of international antitrust enforcement. That change is the rapidly growing importance of a number of antitrust agencies outside of established centers of enforcement such as the US, EU, Canada, Japan and Korea, particularly in the BRICS countries. Companies around the world and their advisors now also have to be very aware of merger control and antitrust enforcement developments in Moscow, Beijing, Brasilia, Pretoria and most recently New Delhi.

In this new multipolar antitrust world it is highly significant that the agencies of these powerful emerging economies have decided to work increasingly in cooperation with each other exchanging experience and information and providing mutual assistance. This process was also seen at work at the impressive BRICS conference in Beijing in September 2011 when the IBA also participated as a non-governmental organization. In 2013 there will be a further conference in New Delhi which is particularly appropriate as the Competition Commission of India joins the ranks of major antitrust jurisdictions.

Starting from different backgrounds the BRICS countries have each developed their own local competition culture and have made remarkable progress in putting in place merger control and antitrust rules. In the area of merger control Brazil was the first to introduce this in 1994 and India is the last BRICS country to have brought into force merger control rules. China's merger control rules have been in place only a few years but are being rigorously enforced. All the BRICS countries have adopted tough anti-cartel measures within a short time and all have adopted leniency programs. Each BRICS country has designed and developed specific rules on unilateral conduct and all the BRICS countries now all have unilateral conduct regulations. In Russia and China these regulations are very detailed. In India some of the first major cases brought by the Competition Commission of India have been in the area of unilateral conduct.

This book analyses in detail the fast moving antitrust developments in the BRICS countries. At a time when the BRICS antitrust agencies are increasingly asserting their roles on the world stage and cooperating together more and more, it is extremely useful to have this up to date focus and comparative analysis on what the BRICS countries are doing in the antitrust sector. The IBA will continue to provide a leading platform for discussing this topic, notably at our conference in Dublin. As Vice President, I would like to thank and congratulate the IBA Antitrust Committee and all those whose work has made this very useful and fascinating book possible.

Michael J Reynolds  
IBA Vice President  
Brussels April 2012



## Preface

The modern antitrust era began with the enactment of the Sherman Act in the United States over one hundred years ago, and the antitrust realm was essentially limited to North America and parts of Europe for decades. Today, we live in a much more “multipolar” world, both in terms of international politics and antitrust law.

Brazil, Russia, India, China and South Africa have been instrumental in this process of globalization of antitrust law. This book contains a detailed study of the antitrust laws and policies of each of the BRICS countries. For each country, the book features one overview article written by an official at an antitrust agency and three specific articles written mainly by private practitioners. These latter articles focus on cartels, unilateral conduct and merger control, respectively. The fact that it is possible to organize the book’s chapters according to these three kinds of anti-competitive practices reveals the similarities between the antitrust laws of the BRICS countries – as well as similarities with the antitrust laws in North America, Europe and elsewhere. Reflecting this commonality – and diversity – this book also contains a chapter with comparative analyses of the BRICS antitrust laws in a global context.

As editors, it has been our great pleasure to work with the very knowledgeable, high-profile authors from which we have learned a lot during the edition of this book. We hope that the reader will equally be able to benefit from the vast pool of knowledge conveyed through their articles.

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