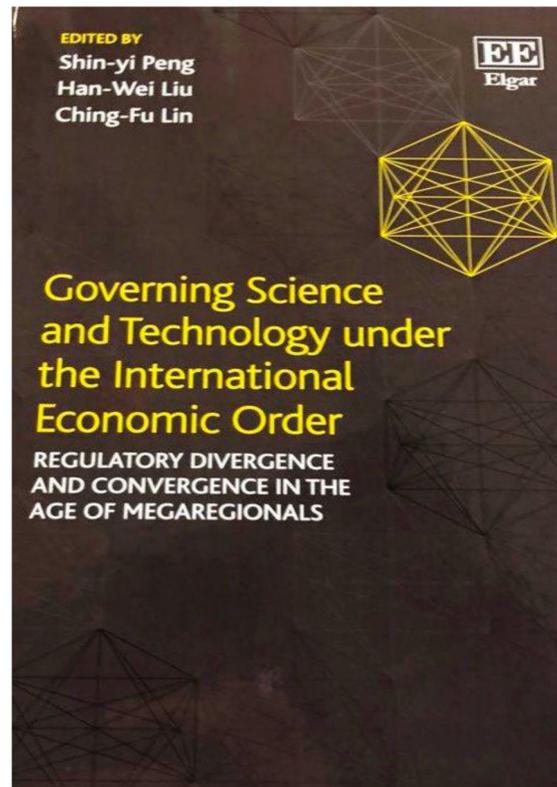


Governing Science and Technology under the International Economic Order



Governing Science and Technology under the International Economic Order: Regulatory Divergence and Convergence in the Age of Megaregionals.

By

Edited by Shin-Yi Peng; Han-Wei Liu and Ching-Fu Lin; Edward Elgar Publishing, Cheltenham, UK, Hardcover, 2018, 416 pages, ISBN: 9781788115551.

The Book discusses the prospect of Governance of Science and Technology within the existing International Economic Order with a special focus on Mega regional agreements with Chapters on Technology. To begin with, the authors could have done well to conceptualise governance as distinct from regulation, as also limiting the understanding of the International Economic Order to its structural elements and organisation.^[1,2] It is another matter that even this epistemic division on the approach apart, the process of negotiation has

several pitfalls. The Book does attempt to address the reality that Institutional alignment in multilateralism is beset with the policy processes for generating consensus. Compared to the harmonisation agenda, this seems like a truncated attempt at survivalism. This Book reminds one of the *Termites in the Trading System*, i.e., preferential trading agreements as undermining free trade.^[3] This proposition has strong contestations, in terms of their justification and the possibilities they present. The social preference formation has been reduced to regulatory cooperation across geographies, which does grave injustice to the key arguments of the Global South arising from developmental complexity and the failure of markets in ensuring economic stability, aversion of environmental crises and engendering a social, as opposed to accumulative consciousness.^[4] Bereft of this important voice, the Book seems to be going nowhere, except pragmatic elements of treaty

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negotiation, without outlining the structural issues regarding the governance deficit that the dispute resolution mechanism of the WTO has, besides issues surrounding single undertaking, negative integration strategies and the erosion of the relevance of the non-discriminatory system.^[5] Further, it would serve the cause of science and technology if a brief allude to the distinction that exists to clarifying what aspects could be considered. The key thesis surrounds the reduction of costs of coordination in relation to policies in different jurisdictions. In the existing atmosphere of dismantling of key multilateral institutions, this Book sounds unduly optimistic about the process of generating consensus- a key impediment to policymaking that answers the priorities of the Developed and Developing World. The author could have benefitted if a clear conceptualisation of the role of future diplomacy was positioned in relation to innovation and not neutral technological collaboration.^[6]

The Theoretical framework employed is that of regulatory cooperation. That said, to borrow a phrase from the author, regulatory cooperation is like an accordion. To consider the case of regulatory policy processes with a linkage that is far removed from the domestic context, namely the construct of the International Economic Order gives a sense of déjà vu, in terms of the globalisation and its discontents theme.^[7] The pursuit of the variable geometry paradigm with a singular aim of manufacturing consent on a supposedly broad range of areas, other than market access for trade in goods and services appears as a via media of an Institutional Innovation.^[8] The distinction between a critical mass approach to consensus used in the Information Technology Agreement could also have been outlined.^[9]

The opening Chapters position the efficiency that regulatory cooperation brings to the discourse on harmonisation. However, economic cooperation can hardly be the sum and substance of the structural elements of International cooperation, given its origins in a self-feeding dynamic that is largely based on Power Structures. The aspects on Policy space and processes outlined in such a context reflect on how realistic a prospect such cooperation can be. While it does deal with historical contingencies of the world trading system institutions, it does not engage critically as to why disagreement is more the norm than the exception. The narrative on global value chains does identify how the need for regulation arises but fails to look into knowledge transfer processes and the political economy surrounding it in any effective way. It also fails to articulate a role for law therein as an endogenous factor. More reflections on the way value is generated, captured and redistributed within the value chain could have served to outline the role of law.^[10] More so, it does not engage with the learning opportunities that policy processes attempt to provide for firms to upgrade. An alternative epistemology

to the market-oriented paradigm to regulation appears to be more relevant. To position, the shift in employment as a tragedy for the Developed is a bit overrated, as is the potential benefits that developing country firms have derived from participation therein. The prospect of shared social preferences is therefore compromised. The Book examines the failure of governments to undertake the necessary regulatory reforms in a rather blinkered way, unmindful of structural adjustment, WTO Disputes and other historical phenomena which have given rise to the lack of positive integration. Failing these discussions, the Institutional dialogue and the proximity to the context sought to be created is a bit of eyewash. The author does well to understand that regulations are dynamic with rules and enforcement, changing in response to emerging political and market demands, past performance and new scientific developments. However, as to how to develop this prospect is unclear from their discussion. More so, it seems to hold democracy as a key culprit of non-improvement in domestic decision making which is the root of the problem. The need for active support of regulatory officials is misplaced. The basis for regulatory cooperation is skewed towards a trade facilitation mandate which overlooks other important factors. With such a characterisation, it is only to be seen whether the actual asymmetry of interests can be addressed. This to my mind is a clear no, returning us to the era of geographical proximity as a key influence to technology transfer and knowledge transfer. The chapter on the free flow of data and digital trade (Chapter 3) elucidates the European Example, often used in Literature to demonstrate regulatory cooperation. Given the rumblings behind the Brexit and Eurozone common currency regime, it is only too be understood how problematic this choice is. At two levels, this is contradictory to the author's framework, especially where he says that such regulatory cooperation takes place in mature systems and that when the area of regulation is relatively new, i.e., where there exists a regulatory void of some sort. This conceptualisation is not satisfied in the Digital Market scenario that the authors present. Further, as the author does well to admit that the tension that exists between the objectives of a free flow of data and protection of personal data is more than just the fact that which human right covers which aspect. The specific emphasis on the legal uncertainty arising from the scope of privacy and data protection, balancing of interests' tests, in relation to the right to be forgotten and specific condition on deletion of data contained in privacy instruments is also important.^[11] In relation to the Cloud Market, he emphasises that free flow of data cannot only be conceptualised only as an expression of human rights but must be understood as a network of legal relations that influence and channel the distribution of information.

The authors attribute the legal uncertainties, in respect of these two principles as reflecting a lack of trust in the respective services on the part of consumers and businesses correctly. But

in the backdrop of such confusion within a system, generating agreement on a conceptualisation of data protection would be unfeasible. The access to public information in terms of the transparency principle contrasts sharply with the rights-based systems of controlling data flows. To argue that the General Data Privacy regulation that represents the latter view as achieving transparency in the short term, cannot overcome the gatekeeper principle (p. 50). The rest of the Chapter is devoted to demonstrating the various principles involved in data protection like good faith processing, legitimate use, consent-based processing, etc. However, I fail to understand how this exceptionalism carves commercial legal rights any more than a human right. I can, however, understand why the balance of competing interests is causing an issue of uncertainty. However, to argue that the GDPR is designed in a technologically neutral manner is a bit economical with the truth, considering it validates the use of technical measures in implementing data processing and the way privacy is sought to be embodied in design (the artefact) and the default structuring. The obligations or the normative aspects in terms of compliance sought from firms, talks of data protection impact assessments and other aspects which are constitutive of the data processing process. Like every formal institution, particularly Law, the element of sanction or punishment to order behaviour is discussed in terms of liability, a quantum of fines, etc. which have implications for the implementation of any such regime. The aspects of enforcement implicate a new concept of intermediary liability, due to level at which control is to be exercised and Safe Harbour provisions for private entities acting towards enforcement in the Online scenario. Predictably enough, the author identifies the resultant fragmentation as responsible for the difficulty in making information and communication exchanges. Here, he confronts the dichotomy between technological interoperability and legal interoperability, in relation to their relative strengths and weaknesses. This demonstrates how the interoperability criteria are difficult to implement with regard to technical interoperability. This should flag capacity issues for developing countries in pursuing standards and the processes they are arrived by. The relative merits of standardisation appear tenuous in this context. What is starker is that the skilling and manpower requirements of such a scenario are not considered in this discussion, whereas that is most important to the absorptive capacity required to enable this transition. The conflict that legal interoperability generates, in terms of data transfer restrictions could have been characterised as a regulatory competition of standards rather than the staid dialectic of harmonisation and standardisation, which often discounts the underlying switching costs of the transition.

The call for an organisational model, instead of a traditional geographical approach to risks caused by country or location to which data is transferred makes small talk of regulatory risk that the Authors wish to emphasise. Even so, the onus

of proper treatment of data on the data controller can have severe implications for a free flow of information and will not further transparency merely by the technical implementation. To advocate a contractual design for the adequate level of protection appears ill-advised given the state of the national law of the country controlling the data. It is a well-known principle of Law that it supersedes contractual stipulations if the terms are unconscionable or against the Parties interests. Admittedly, this will create a situation akin to toll goods, which is undesirable. The questions of effective control and enforcement, particularly third-party compliance are not easily ascertainable. The argument thus appears contradictory to his prescription of a contractual approach, in the absence of hard evidence or control over the use and transfer of data. The issue of data transfers to other countries bears a development connection which could have been explored more by the authors. The authors paint a mixed picture of the prospect of bilateral agreements between EU and USA on an adequate level of protection. Even if the standards mentioned in the General Data Privacy Regulation are adopted, the interpretation problem arising in view of the conceptualisation of data privacy and a free flow of information within EU cannot go away by creating contracts with legal uncertainty. Contracts can be invalidated for lack of certainty as a matter of principle across many jurisdictions. This kind of uncertainty goes to the root of the liability and obligations arising from it (p. 56). It is unclear how this agreement offers a good example of the approach being advocated. Thus, it emerges that this scenario is set for more collision and fragmentation than cooperation, in relation to Cloud Computing, given its highly complex and multi-layered nature. It is even more surprising that net importers of information like the United States would agree to such contractual provisions. The issue of cooperation between the data protection supervisory authorities is thus a non-starter. The exchange of information through administrative assistance is more of a bureaucratic strangulation of the free flow of information principle. The issues of law enforcement could have been seen more critically, especially the participation of non-profit organisations and associations in the exercise of individual rights under the privacy regulations. The approach of providing justiciable or enforceable claims of violations will present serious issues which could have been reflected upon.^[12] Associations and their standing as compliance monitoring bodies will present issues of capacity and capability. To increasingly make the area litigious is a minefield for the crowding effects to manifest. The prospect for the development of a community centred Data Economy will end up ringfencing access to data. The well-oiled functioning expected from such regimes is at best a nuanced proposition. The discussion of the pillars for the future digital economy in terms of data producer's rights skews the discourse away from the data controller and the end use of the data, which

is important for Developing Countries. The element of integrity protection could have been elaborated more. The cursory reference to areas of Law that require to be formulated goes on to demonstrate how the rights-based system is ill-suited to this area of data protection, as it ends up prioritising aspects other than human rights aspects and does not provide for any additional certainty and transparency. The subsequent portion of the Chapter dwells upon fresh developments in relation to Digital content, without reflecting on how technical mandates used to define policy are often not in tune with technical requirements imposed by standard setting processes nor do they consider the social factors shaping the trajectory a technology takes. To make a case for data as an accepted tradeable commodity is an assumption best avoided with caution it deserves. To position a sharing economy in such terms given an allocation of overall competences is at best myopic. The model they proposed could have been better serviced using open source access. The simultaneous consumption and production of data by the same entity are likely to raise crucial issues both in relation to development and in relation to regulation and governance.

Chapter 6 discusses techno-nationalism in the context of interoperability standards, within the Information and Communications technology Industry. The shift the author traces is from proprietary standards created by firms or government agencies in the Developed West to Asian emerging country firms. Particularly he discusses China's Wireless Local area network Authentication and Privacy Infrastructure standard. This was controversial due to compatibility issues. He traces the development of this standard in the Chinese context, discussing its institutional challenges and critically looks at the long run prospect of low value-added Chinese manufacturing. Among other areas like government procurement, subsidies, etc. the development of indigenous standards should have been elaborated more. The author considers the concerns of digital protectionism and the development against this policy made by China. It also nuances the discussion on standards given the presence of other institutional challenges. The appraisal of the threatening nature of Chinese indigenous standards to the International Economic Order is presented in a carefully crafted manner. The purpose of the author is to unpack the internal and external factors that constrain China's standardisation system. None of the other writers address the issue of the response of other countries to this situation. The author attributes the rise of techno-globalism reducing trade barrier concerns as a result. He begins by discussing the evolution of Chinese standardisation regime in a manner which is more of a macro picture, but less in terms of formation of routines, selection of routines, feedback and their impact on the evolution. The objective behind the formation of standards varies with the economic structure and political economy of the country. As such this does not provide elements capable of generalisa-

tion. The hierarchy of standards demonstrate suitable division within China and the fragmented nature of the standards. The discussion of compulsory and voluntary standards brings perspective as to how the adoption of standards is influenced by multiple factors including the policy environment and level of development. Post-WTO membership, China had a new agency for developing an agenda on standards, including that of homegrown standards. This is a key lesson for Countries depending excessively on foreign standards. The focus on national innovation system and indigenous technologies demonstrate the techno nationalist paradigm. The logic of indigenous standards is premised on regulatory priorities aligned with institutional challenges they seek to address. The case study discussed is that of security protocols in relation to the standards. The impact on the adoption of the new standard arising from incompatibility with existing infrastructure was notable in terms of manufacturing costs, a requirement for licenses to encryption technologies, pay per chip royalty regimes, deep localisation requirements. More so, China struggled with chip technology and was a net importer for semi-conductors should have tempered this discussion on standards realistically. Privacy concerns also afforded traction to the issue of developing standards. The graded protection introduced to address social order, public interest and national security demonstrate how they have prioritised indigenous intellectual property in core technologies of each layer of these technical standards. The way China enforced this standard came in for sharp criticism due to trade barrier concerns. The Chinese approach to standards has never been hands-off and has shown a strong preference for home grown standards, an element missing in respect of many other countries. The diplomatic retreat of China was calculated to extract favourable trade terms and shows the complex setting of the standardisation regime. The market mechanism and global value chains role in this context has been elaborated realistically. Particular elements like coalition building are discernible. However, the evidence led nature is distinctly dominated by discussions on technical aspects of interoperability. The issue of legal interoperability flagged earlier could have been contextualised. The aspects of upgrading with respect to global value chains in the ICT industry could have served to highlight their role more effectively in terms of governance structures etc. The institutional account brings a more nuanced and critical view of Chinese interventions compared to conventional accounts (p. 132). The Institutional history and socio-political contingencies which influence policy making have been etched out very well. The coordination problems outlined could have been understood as a result of the top-down approach. The account of US pushback seems correct in light of its relentless pursuit of regulatory capitalism. The closed nature of policy processes of consultation surrounding enhanced transparency requirements demonstrates the manner of enforcement through the

bilateral investment treaty and WTO agreement on Technical Barriers to trade. That the participation in policy-making processes would be extended by way of preferential treatment shows how dysfunctional our multilateral trading regime is in terms of consultative processes. The case of restriction on domestic technologies on encryption is discussed with regard to commercial applications, which renders uncertainty on dual-use technologies. The conclusions made by the author in this context sit well with the contextual discussion largely in terms of the mandate of the Book. This also shows how business interests are used to leverage negotiating positions and supply content and meaning to cooperation in various situations.

Chapter 7 discusses the trade and biological diversity governance in the context of mega-regionals. Here the typical dynamic of power relations is altered despite its structural balance in favour of developing countries. Here the author begins with examining the principles brought by the Bretton Woods institutions on Currency exchange and those underlying the notion of the New International Economic Order to understand the tension. He overstates the role and contribution of the former to promoting world trade without examining the economics of comparative advantage and competition, that too in an unwarranted manner. To link this with a global environmental governance paradigm is absurd, save for the fact that the author tries to deride the hortatory ambitions of the latter, as reflected in respect to biological diversity. He discusses the WTO GATT Agreement provisions that address this clash between trade and environmental governance. The specific provisions of protecting natural resources which exclude the trade route disciplines do not address the issue of usage that comprehensively and suffer from interpretative uncertainty. Abruptly, the reference to aggressive use of such countering measures built into the biological diversity regime appears (p. 144). To perceive this as reviving a clash is uncalled for without examining the framework of biological diversity. The obvious conflict with the trading regime is reflective of a different set of values prioritised by both. To derive the existing inequalities in economic and political power perpetuated by Bretton Woods Institutions as being linked with an international division of labour that relegated the colonies to resource provider status, which rendered developing countries incapable of achieving their development potential is true in part. The calls for a New International Economic Order and its formulation as a soft Law instrument outlines how the multilateral system has confronted the dissenting voices through hortatory statements of intent with little that can be enforceable. The concept of Permanent Sovereignty over Natural Resources has given rise to inequitable outcomes in respect of the means employed under international law like nationalisation without full or adequate compensation. This is a political-social contingency seen in most of the developing world to some degree, where developed countries resorted to

control over natural resources through colonialism and multinational corporations. The legacy of negotiations of the Convention on Biological Diversity has shaped how responsibility has been articulated historically in international environmental law tracing it to the modern concept of common and differentiated responsibility in climate change negotiations. The Nagoya Protocol discusses the responsibility principles in relation to the loss of biological diversity through bioprospecting and biopiracy. However, what is even more contentious for the Developing world is the clear regime of benefit sharing which has for long been avoided by the developed countries.

The role of multinational companies in terms of economic activities has rightly been the subject of regulation. The principles of the New International Economic Order, in terms of just and equitable prices, is undermined given the realities of anti-dumping regulations and commodity price competition through competitive currency devaluation. These issues are clearly outside multilateral disciplines. The fact that natural resource-based industries are at the lowest rung of value addition is, of course, no respite. The deindustrialising effect of colonial power has been rightly attributed. The explanation of low economic growth in resource-rich countries has not been addressed to phenomena such as the resource curse. Although this setting matches the conceptualisation of the author concerning regulatory voids, the role played by developed countries is entirely instrumentalist to their motivations. The exceptionalism of the GATT /WTO regime ensured that intergovernmental commodity agreement did not fall out of the trade disciplines, subjecting it to criteria approved by its membership. The goal of international cooperation and developmental aid, seen as a measure for ensuring buy-in is now materially altered in dimension with developing countries being denied aid as the marginal utility of consent it created has diminished.

It is in this idealist setting that the issues of trade and biological diversity governance have been discussed. The historical development and evolution of the Convention on Biological Diversity are discussed with some reference to Access and Benefit Sharing mechanism rather mechanistically without critically assessing the points of divergence and or the points where regulatory cooperation is being developed. The division of voluntary and binding protocols in this context have been dealt with to some extent. The benefit sharing mechanisms do not ensure fairness or equity in benefit sharing in any novel manner suggesting contractual freedom between Parties. To argue mutual agreed upon terms contractually as a novelty is erroneous. Typically, legislation which prioritises contractual terms ends up undermining their specific discipline as they either fail to mandate specific provisions that must be included or those that are unfair or unconscionable. Failing this, they are a bit of an empty vessel of an institutional innovation (p. 152). The uncertainty surrounding prior informed consent

as to particular use of biological resources only compounds the situation. There is equal uncertainty on what comprises fair compensation for the use of genetic resources — the incorporation of market principles at the insistence of developed country members. The conflicts with the trading regime have been more clearly brought out as a result (p. 153), particularly on the conflict with intellectual property rules. To say that the international trade dimension complicates the matters in respect of environmental goods, where governmental intervention has existed historically is an admission of guilt. This form of exceptionalism has been used to evade the other disciplines of access and benefit sharing. The way in which conflicts with trade rules occur are discussed and the potential exposure of restrictions imposed considered in light of trade rules like export prohibitions and quantitative restrictions. This demonstrates that rules vary in their usage against developing countries. However, the circular nature of Article XX justifications ends up prioritising trade effects as the guiding consideration even in benefit sharing cases. The enforceability of benefit sharing provisions within the Intellectual Property rights system in terms of consent obligations is a bit of a pipe dream. On the issue of patentability under Article 27. 1 TRIPS being contingent upon benefit-sharing obligations does not effectively form part of the obligations, the less said, the better. The justification of public order and morality exception advanced by the author for this provision does not serve to underscore how, where and on what regulatory cooperation is required (p. 156). The conclusion abruptly comes to discuss provisions within the Trans-Pacific Partnership which are largely hortatory as central content of the specific Chapters. Post haste, he develops an agenda for negotiation, which does not address the concerns of developing countries that he outlined earlier. The adoption of consent-based measures in relation to benefit sharing is left to National Treatment. The consultation mechanism should have been reviewed in terms of its implementation experience, specifically as relates provision of scientific and technical information and remedies by way of dispute settlement. It is unclear how soft approaches to enforcement result in better cooperation from this account. The uncertainty surrounding their adoption is another crucial factor in assessing their impact and eventual efficiency.

The last Chapter examines the concept of unfair competition in the online scenario given the typical issues raised in China in recent events. The author is of the view that Intellectual Property laws have seen a remarkable convergence and he contrasts it with the scenario in terms of unfair competition law. While it is appreciated as to why this area is important, however, it would have helped if he outlined the institutional history of such laws originating in the developed countries and how the development of these remedies as part of common Law came about. This in a sense answers the informal institutions giving rise to formal one's argument.

However, as regards the convergence of purpose and objective of unfair competition and intellectual property laws, I am a little less sanguine about the fair market orientation. He cites divergence amongst national laws as distortive of the market by affecting patterns of enterprises in the different markets. His argument offers a vision of the Internet that the globalisation brought about in large measure and yet so contradictorily does little to change the structural mechanisms of capital forever at odds with societal interest. The author discusses the increasing trend of unfair competition related cases in China to demonstrate issues relating to various platforms like search engines, social media interference in business methods. The author contextualises the substantive definition in the Chinese legislation to outline the traditional components of unfair competition, while embodying provisions for interpretive flexibility. However, it is this principle case by case approach that presents the difficulty of applying abstract principles to concrete cases. The author discusses the various treaty provisions of the Paris Convention in relation to International harmonisation of this field of Law. He traces it to the deep moralistic roots and argues that honest business practice as a criterion of evaluation in the Paris Convention is context-specific. In particular, the freedom of competition entails that anti-unfair competition measures do not create unjustified barriers to freedom of competition. This dialectic of impact is different from trade impact outlined earlier. The typology of acts comprising confusion, disparagement and misleading the public about the nature, quantity and quality of goods. The author discerns the scope and conditions of application as the source of variation in the prohibition of these practices. To say that the concept is prevalent in civil Law countries ignores the historical contingencies under which this concept took shape in England was out of common law traditions, i.e., through Court judgments (p. 342). He rues the little progress made on its international harmonisation, despite the TRIPS agreement without realising how it pays lip-service to the idea. The concept of trade secret appears to be a bigger secret than the formula of the soft drink it is most commonly associated with, but its nature as a distortion to competition is well-known. The shift towards consumer interest, as opposed to the interests of competitors, is indeed significant. However, the author's narrative on the Agreements implementing this new development dimension for unfair competition regimes is a bit far-fetched, given that the EU Directive applies to business to consumer commercial practices in a manner that juxtaposes professional diligence with distortion of economic behaviour of the consumer. It is an admission of the fact that the coverage earlier avoided a large part that was equally important to competition issues. The three-step test of the EU-UCPD in determining such practices is outlined and the nature of practices explored from a sectoral perspective. The comparison with the TPP Agreement is not well discussed. (p. 345). It is

equally wrong to argue that recognition of consumer protection can occur fruitfully without formulation of rules implementing the same. The inference drawn should have been discussed more. The next section on the methodology and difficulty in applying the general rule prohibiting unfair competition outlines the problems associated with applying abstract rules to concrete situations. Regarding the difficulty in defining the operational criteria, the institutional development has been outlined as one of limited development. He distinguishes civil law countries based on their comprehension of unfair competition. Given this, the author's celebration of the Paris Convention needs correction. The uncertainty arising from this interpretive flexibility should have been elaborated more. The different methods employed in defining general principles do certain outline elements which are more diffuse in interpretation. The substitution of intent with impact in such definitions are not symmetric nor do they explain the reasons for the choice. The aspects relating to professional diligence set a standard of reasonableness which requires delimitation. The uncertainty on this front is well articulated. The author argues for a case-by-case determination by the Courts using the general rule prohibiting unfair competition and the list of such practices should be interpreted in tandem with each other in case of national laws and treaties. The other factors include limited progress in categorising unfair competition. Rather belatedly, the author returns to the Chinese context and the principle of no interference except in public interest without outlining its evolutionary context. He critically analyses a Chinese Supreme People's Court judgment, where the issue arose concerning anti-virus software and search engines. On a finding of no interference principle being violated, the element of public interest was invoked unsuccessfully. The NSPC further narrowed the right of assessment based on its status as a market operator. The business to consumer relationship aspect crucial to consumer protection is not touched upon here. The account neither outlines technologically deterministic elements nor the institutional contingencies behind these developments well. The concept of Net neutrality should have been discussed in relation to Adwords or search terms. As to how this violates the limits of fair competition and from what perspective is unclear. The critique of the non-interference principle talks of the dubious utility of it in defining the same. Further, the impact this would have on the freedom of competition of market operators will be serious. The conflict with the public interest comprises a contradiction of sorts (p. 353). The author draws some interesting analogies in the online and real-world context. To claim a change in the logic of Law from that of freedom to authorisation, the latter being justified by public interest and the former by unfairness or interference with the rights of others, Establishing the case for the interference understood in a negative sense is uncertain. The author outlines the wider

incorporation of the no interference principle within the judicial and legislative practices to revisit the freedom of competition principle. The new Law thus is a retraction from the non-interference principle's broad interpretation. The emphasis on the use of technical measures in relation to the disruption of normal functioning of other operator's Internet products or services appears uncritical on uncertainty (p. 354). The net implication of this articulation undermines the public interest or authorisation aspects and bears an anti-free competition connotation. The entire development of Chinese Law was influenced by the German model but resulted in a narrow meaning to the concept of confusion and the problem of applying an abstract principle to concrete situations. The suggestions for reform consider the developments on the consumer protection dimension internationally. The operationalisation developed is rather diffuse developing an equivalent concept from trademark infringement and is narrow as compared to the Paris Convention. The addition of new types of commercial signs like domain names, website names, etc. and the inclusion of confusion causing acts in the general rule enlarges the scope of application. The possibility of other means of confusion than commercial signs under the Paris Convention, especially different anti-competitive practices has not been incorporated. The discussion of legal principles around confusion, disruption of service in subsequent litigation is well-outlined. The author considers the case for consumer protection dimension standalone in unfair competition determinations considering alternative dimensions like harassment. The parallel developments in consumer protection and market operator's interest protection are compared. The reference to attempts to influencing the consumers choice has been adopted as a criterion in evaluating unfair practices and concrete example for the application given. The scope of application compared to the definition of aggressive practices under the EU-UCPD is narrow. This should have been a more nuanced proposition as regards consumer protection in totality. The factor of threatening and abusive behaviour in understanding competition appear irrelevant (p. 357). The author appears optimistic about the future development of the Law. The arguments attributing the harmonising effect to the agreements are only partially correct in terms of the sources of Law. The case is one of reflexive harmonisation rather than regulatory cooperation or coherence. The overall argument of the Book is ambitious in its treatment, but the theoretical framework almost like a shifting goalpost. While the Book raises certain pertinent epistemic divisions in multilateral decision-making processes, as regards various governance themes, it works in parts on the theoretical framework of regulatory cooperation.

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DOI: 10.5530/jscires.8.1.8