Preface

The Global Limits of Competition Law is the first book in the Stanford University Press series Global Competition Law and Economics. The series is aimed at one of the most central questions to the study of competition law (known as antitrust in the United States)—how law, economics, and institutions respond to an increasingly global and interconnected antitrust community. Over time, the use of economic analysis in competition law has become the most important development globally in this area of law. The universalist concepts of economics might serve as a common vocabulary enhancing exchange and dialogue between various competition law systems, a sort of *tertium comparationis* or metalanguage facilitating any effort of comparative analysis. Yet, the same economic inputs do not always lead to similar legal outputs, as other variables may interfere, most notably institutional and cultural factors. It is therefore important to integrate the economic analysis of competition law into the broader economic, political, social, and institutional settings of each competition law system. Although there is some excellent comparative work in this area, we believe that a discussion of the interaction of all these factors from a global perspective has been lacking. Similar issues on the implementation and the scope of competition law come up in a number of jurisdictions. Too often policy makers merely reference the ready-made solutions adopted by more established competition law systems, such as the United States and the European Union, without due regard to local factors. This gap in the literature is particularly important in view of the expansion of competition law globally.

The aim of the series is to create a well-developed set of books that will address the broader context in this dynamic area of law and policy. Indeed, the geographic coverage of the competition law enterprise has expanded considerably during the last two decades. More than 120 countries have now enacted competition law statutes and many apply them regularly. Newspapers

globally cover important competition cases, and competition law has become a prominent field of law with its own army of practitioners and academics. Yet, despite the valuable efforts of the International Competition Network with regard to competition authorities and some recent academic initiatives, there is little work in competition law and economics addressing, from a global perspective, common challenges faced by a variety of competition law systems. There is an emerging global competition law community, employing a common vocabulary, that of industrial economics, and proceeding to similar legal classifications, influenced by the two major competition law systems in the United States and Europe, but there are very few outlets for advancing a global discussion on the issues raised by the implementation of competition law in different economic and social settings. The aim of the series is to provide exactly this thinking space by involving academics from around the world.

The topic examined by the first volume in the series is "the global limits of competition law." Over the past three decades, the competition law enterprise has witnessed a profound transformation of its psyche. One of the most effective challenges came from Chicago, where a number of law and economics scholars had cast doubt on policy makers' "overconfidence" on the competition law tool and advocated its "rationalization." We used the twenty-fifth anniversary of the publication of Frank Easterbrook's seminal article *The Limits of Antitrust*[1] to frame a broader discussion about what procedural, substantive, and institutional limits there are to the effective use of antitrust. Easterbrook raised the issue of litigation costs for business, suggesting that judges should develop a filter or presumptions approach that would provide some legal certainty to firms and would limit the ever-expanding sphere of competition law. In Easterbrook's case, his concern was to respond to the doctrinal problem of the era in which he wrote the work. Antitrust was primarily an American enterprise and the combination of low procedural hurdles for private plaintiffs, high litigation costs, and the significant potential for mistaken prosecution suggested the need to create filters to "limit" antitrust. The discussion over the limits of antitrust illustrates the impact of the Chicago approach in U.S. antitrust law but also, in variable degrees, in other competition law systems reaching maturity. This debate over the limits of competition law is still ongoing.[2] However, its context and content have evolved. The debate does not only focus on the issue of economic reasoning in competition law but also integrates other factors such as the institutional, cultural, and legal background of each competition law system. A different conceptualization of the "limits" of competition law has emerged, drawing more on practical

considerations, empirical findings, and theoretical metaprinciples. We hope that the first volume in the series will provide useful and original perspectives on this important topic and that it will enhance a global discussion over the adequate "limits" of the competition law enterprise in each jurisdiction.

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