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The Global Value Chain Policy Series was launched in 2018 by the World Economic Forum's System Initiative on Shaping the Future of International Trade and Investment. It consists of brief policy papers on various aspects of global value chains (GVCs). The aim of the series is to stimulate cross-policy discussion and thinking about GVCs and collect ideas from researchers and practitioners on how to help GVCs contribute towards development, sustainability and inclusiveness. These ideas can then be examined in more depth in the context of particular value chains, regions or public-private initiatives. The World Economic Forum is working to bring the relevant actors together to facilitate this multistakeholder, cross-policy undertaking, aimed at catalysing partnerships for impact.

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Background

In 1990, there were fewer than 20 jurisdictions applying competition law. There are now well over 100.[1] From a historical perspective, this "globalization" of competition law and policy has been a remarkable success, both in its speed and completeness. This is worth emphasizing because, in the rest of this paper, the emphasis will be on the system's flaws and inconsistencies, as well as on the challenges to its continued operation. This does not imply that the existing global system of competition law enforcement is a problem, merely that it can be improved.

Competition law has largely remained on the "to do" list for global trade agreements since the 1940s. Most recently, a World Trade Organization (WTO) working group was set up in 1997 only to end without success at Cancun in 2003, partly because of opposition from larger developing countries.[2] To have tried and failed is perhaps more disheartening than never to have tried, so this failure continues to cast a shadow over discussions of international competition systems.

More positively, the creation of the International Competition Network (ICN) in 2001 promoted convergence and co-operation, but its success in joining up agencies has perhaps taken some of the impetus away from measures to create truly international competition rules. There are regional arrangements, notably the European Union, but no global rules. In principle, such rules should be easier to agree 15 years after Cancun because the larger emerging economies have adopted competition laws, but the political climate for international decision-making has obviously deteriorated. For the foreseeable future, we must work with, and improve, the existing patchwork of competition jurisdictions.

Most competition laws focus on the welfare of consumers, although they differ in the degree to which they explicitly state this (a few take more account of producers' interests). There is much debate as to how competition agencies should work; for example, protecting the process of competition or its outcomes, prohibiting specific conduct or evaluating its effects. However, these disagreements should not obscure a generally-accepted principle, "protect competition, not competitors". Competition laws in most jurisdictions do not prevent efficient firms out-competing their rivals and growing as a result. Conversely, small firm interests seeking protection from competition by bigger rivals will often find little support from competition agencies.

Global value chains under competition law

A global value chain (GVC)[3] could experience anti-competitive behaviour in many ways:

- A cartel emerging at any level of a GVC could raise prices downstream
- More controversially, a *buyer* cartel might artificially depress prices *upstream*
- A dominant firm within a GVC might abuse its market position to exclude competitors (including entrants trying to extend their activities from other levels of the GVC)
- A dominant firm might seek to abuse its market position to *extend* its dominance upstream or downstream, for example, refusing to deal with firms other than its own affiliates
- A horizontal merger (between two firms at the same level of the GVC) might create market power
- A vertical merger (between two firms at *different* levels of the GVC) might create the opportunity or incentive for abuse of a dominant position

As GVCs cross borders, gaps between national (or at best regional) enforcement can be a problem, as this paper will discuss. However, it is important to note that even if there were no gaps, competition law and policy is unlikely to be a good instrument for the objectives commentators often seek. These often concern the *distribution* of value-added, either between different existing players in the chain or by "upgrading" countries' participation in GVCs; moving to higher value-added stages of the production chain.

Competition law, if effectively applied internationally, could help achieve these objectives. It would preserve competition within and between GVCs and would help to remove barriers to entry, to allow for upgrading, as long as the upgrading firms are capable of competing with the existing firms in the stage they are seeking to enter.

However, competition law would not give them any special help in doing so. It is rarely directly concerned with distributional questions, particularly between different producers. A hypothetical global competition law modelled on that of the EU, for example, could probably not be used to prevent large food processing companies squeezing upstream suppliers through application of bargaining power, unless by doing so they excluded competitors from the market. A global law based on United States practice would do less still.

Existing national competition law does not specifically favour smaller firms for good reasons. Maximizing efficiency in production creates scope for all to be better off, so in principle national governments should use competition policy to this end and other policies for distributing the proceeds. Irrespective of this, competition policy would be a crude and inefficient instrument for pursuing distributional aims. On a global scale, these arguments for pursuing efficiency alone seem weaker. Poor producers squeezed by a larger downstream firm are unlikely to be compensated by transfers from any consumers who benefit. Furthermore, governments understandably place higher value on their own producers' welfare than on that of consumers in a different country.

It is therefore tempting to suggest that competition law, as applied internationally, should take more account of distributional or social issues than do existing national frameworks. This paper will return to this question after considering the operation of the existing fragmented international competition system.

(In)consistency in global competition law

The international competition "system" contains many different approaches, despite its common basis. There are important procedural differences, particularly between jurisdictions in which competition agencies decide on cases and those where they must apply to a court or tribunal. The substance of laws differs less, but the interpretation of those laws often diverges rather more:

- Enforcement against cartels is the most consistent. In most countries, the company itself is at risk of a fine, although in some countries (mainly Anglophone) individuals can face criminal charges.
- Abuse of dominance (harm to competition carried out by a firm with market power), in contrast, is perhaps the least consistently enforced area of competition law globally.[4] The EU and its member states are willing to take action against forms of conduct that US agencies tend to regard as benign.[5] Most newer jurisdictions follow the EU. There is often disagreement among competition professionals as to how to judge which behaviour should be considered pro-competitive and which anti-competitive. If there is an area of competition law that is not "joined up" globally, it is abuse of dominance.
- Merger laws are very similar in substance in almost all jurisdictions, although large multinational enterprises (MNEs) that are merging need to proceed carefully because timings and procedures vary. However, gaps and overlaps can arise when many agencies investigate a global merger, as this paper will discuss.[6]

As a result, industries organized as GVCs will face gaps or overlaps in the enforcement of competition law. Regional groupings such as the EU have complex rules to ensure that matters are investigated only at one level but, globally, there is no such system.

However, there is a principle that helps: Competition law is applied where it has its *effects*, not where the investigated businesses are located. Reflecting this, a global merger could be investigated by all countries in which sales are made by either of the two merging firms, and most likely would be investigated seriously in any countries in which they both made sales. Similarly, cartels with effects in multiple countries will often be investigated multiple times, possibly leading to damages claims pursued in several jurisdictions.[7]

There are potentially gaps resulting from the "effects-based" approach. Two companies deciding to divide the territory of a single country between them would normally be breaking that country's cartel laws. However, supra-national division of two or more countries might be harder to prosecute, as the letter of the law might not always recognize the allocation of the entire country as a "market-sharing" arrangement.[8]

More commonly, however, gaps arise because of practical constraints. A competition authority investigating a suspected cartel between two firms exporting to its territory might have no ability to obtain the information from them that would be needed to bring the case. Competition authorities in the country of origin may provide assistance, but are rarely obliged to do so. A joint survey by the Organisation for Economic Co-operation and Development (OECD) and International Competition Network (ICN) in 2012 found that one-half of the responding agencies had never co-operated with a foreign counterpart to facilitate a case (and it is likely that the majority of non-responding agencies will not have experienced such co-operation either).[9]

Gaps or overlaps in merger control typically arise when a competition agency finds against an international merger but cannot find a local "remedy" to the problem. Often, remedies can be local (for example, the rights to brands can be divested locally). However, in some cases, merger decisions will have international effects. Most dramatically, if a competition agency simply forbids a merger, then that merger may be abandoned globally. Such outcomes are very rare. The most famous is the EU decision to block the merger of two US aerospace companies, General Electric and Honeywell, in 2001. More recently, for example, the British and French authorities disagreed about a merger involving the Channel Tunnel and China blocked a joint venture between several global shipping companies.

The outcome in such circumstances arises from no principle, merely power and pragmatism. A large jurisdiction can block any global merger, a small jurisdiction can block none.[10] The resulting "system" has worked reasonably well to date and competition agencies are typically very concerned to avoid such outcomes by communicating with one another. However, sometimes agencies will disagree and this situation is likely to become more common.

Similarly, abuse of dominance investigations can have extraterritorial effects. Again, local remedies are available in most cases, but when they are not there is a danger of the most interventionist jurisdiction's approach setting the global standard.[11] Intellectual property (IP) licencing offers an example.

The European Commission accepted a worldwide commitment on licencing for digital random access memory (DRAM) chips from Rambus in 2009. It found that a worldwide remedy was required because Rambus's licencing terms related to worldwide sales in a worldwide market. In 2016, the Korean Fair Trade Commission (KFTC) imposed a similar order on Qualcomm, stating: "Given that it is difficult and ineffective to distinguish the Korean market from overseas markets for the purpose of applying the corrective order to remove the anti-competitive effects, it is reasonable not to limit the corrective order and the scope of application only to the territory of Korea and the Korea-registered patents, in order to effectively remove the anti-competitive effects influencing the Korean market."[12]

Such decisions could have profound effects on GVCs, in which licencing of intellectual property rights (IPR) is often an important feature.[13] There is considerable divergence of practice between competition agencies on IP licencing,[14] so global imposition of remedies has the potential to cause serious economic harm, as well as political reaction.

Where in the world is "digital"?

The need for consistency is particularly pressing for digital products, which do not have an inherent geographic footprint. Not all digital products are, or need be, global, but many are. The application of national or regional competition laws to some of these products, while usually feasible, is often very artificial. Just as remedies for IP rights, as described above, might represent over-reach if applied at a global level, but be ineffective at the national level, so geographically-limited intervention in digital markets might make little sense.

At the time of writing, several cases are pending, but there is a clear example from a similar field, that of privacy. The EU has applied a "right to be forgotten" to search engines since 2014, but any EU citizen unable to find information on google.co.fr has been able to simply visit google.com where no such right exists. In 2017, a French court referred to the European Court of Justice the question of whether this should be permitted or whether (presumably as a cost of doing business in Europe) Google and others should be required to also remove links from their US and other sites.[15] It is hard to see a simple solution to this; on the one hand, companies should not be above the law, but equally countries have different laws on what can be published (many more restrictive than those of the EU), and if a law can have extraterritorial applicability, then the strictest standard will prevail.

In competition law, fortunately, the rights at issue are not quite as fundamental as those at stake in the "right to be forgotten" cases, but the problem is essentially identical. If one jurisdiction decides that an algorithm operates anti-competitively, does it (a) enforce that decision only locally, perhaps with little effect, (b) seek to enforce its decision globally, in which case the strictest standard will prevail (and in practice the largest countries will decide on what is permitted everywhere) or (c) seek to evade this dilemma by preventing cross-border digital trade (which has its own costs)?

This is particularly important in the digital sector because there is a huge debate in the competition world about how to treat digital businesses.[16] Almost everyone agrees that just the same laws and principles should apply to digital businesses as to traditional bricks and mortar businesses, but some of the characteristics of those businesses expose some strong divides on how to do so.

Digital markets often depend on rapid innovation and many of them exhibit "network effects" in which an already successful platform is more attractive to new users, and therefore has an advantage. Digital markets can therefore change fast and might "tip" into domination by a single firm or standard. Both such developments are inherently hard to forecast, so competition enforcers need to fall back on precautionary presumptions. Some (mostly, but not all, in the US) might say "we do not know what the future will hold, so we should be cautious and leave these markets alone". Others (many of them in the EU) might say "we do not know what the future will hold, so we should be cautious and act to preserve competition in these markets while we still can". However, global digital platforms will innovate (or not), or tip to monopoly (or not) *globally* if at all, so there is little scope for these two visions to both play out. It is common to hear that competition authorities need to become better at understanding digital markets, so that they do better than falling back on precautionary presumptions, but this might not be realistic in these fast-moving industries.

Digital markets do not raise entirely new issues for competition enforcers. However, they do make particularly clear how differences between enforcement approaches, in a world of globalized business, can lead to incoherent policy-making.

Regulatory capture

All these problems of gaps and overlaps apply even when the competition agency in each jurisdiction is behaving "properly". They are worse if political interests come into play. Producers will often have a strong incentive to use competition agencies to influence the markets in which they operate, especially in GVCs where they might appeal to national interests.[17] Influential companies might seek to abuse competition law to give them an advantage over their rivals, which can operate as a form of hidden protectionism when applied by a "domestic" firm to foreign competitors.

Some commentators have singled out China, both for where its competition agencies focus their efforts[18] and for remedies that appear to have the effect of promoting the interests of domestic producers[19]. However, all of the larger jurisdictions have taken decisions that have been questioned in this manner[20] and smaller jurisdictions often face still stronger pressures.

Even the suspicion of regulatory bias can cause harm. For example, the EU's investigations of technology firms of US origin have routinely been decried by US politicians as being motivated by the commercial interests of EU rivals.[21] Competition policy is singularly ill-suited to "strategic" or retaliatory behaviour by governments,[22] yet the more cases there are that appear to pit producer interests from one country against consumer interests from another, the higher the dangers of politicization.

Doing good better?

So good competition policy can do some good and bad competition policy can do harm, but could it do more? Can competition law and policy be pro-poor and support social or environmental concerns?

Policies combating distortions of competition will often promote economic equality, although not directly or always. Shareholders are typically much richer than consumers,[23] so competition agencies can act as Robin Hood when they intervene. Pro-competitive reform of regulations can help too; badly designed or improperly influenced regulations can often end up protecting monopoly profits.[24]

In the US, there has recently been much discussion of whether *insufficient* competition enforcement has contributed to rising inequality. The evidence for this is mixed, for example, measuring things which do not truly reflect competition[25] or which could be benign[26]. There does seem to be evidence that too few anti-competitive mergers have been blocked and this deserves to be considered carefully by the agencies.[27] Many political critics, however, seem to be calling for wholesale change, for action against dominant firms themselves, rather than merely enforcing the prohibition against anti-competitive conduct.[28]

Most competition experts would agree that such dramatic change would cause more harm than good. Large companies that are large because many customers have chosen them are doing something right. Furthermore, the prospect of growing into (or even being bought by) a large firm is an important incentive for small firms.[29] Similarly, direct action to promote more equal distribution is unlikely to make for good competition law, not least because it would be hard to predict. Social and distributional objectives matter, but competition law is a poor instrument for promoting them.

Is there, however, a case for an international system that is more pro-poor and perhaps more willing to act against large firms than most domestic systems (perhaps to promote social or environmental objectives)? Food and other agricultural supply chains are seen as being dominated by powerful retail chains or food processing multinationals, to the detriment of upstream producers, particularly small farmers. Several commentators argue that such farmers should be exempted from prohibitions against colluding, so they can act collectively to raise prices and secure a higher proportion of the GVC rents.[30]

These are very reasonable objectives. However, even if it is attractive in theory to tilt the playing field to favour the poor, to counterbalance the power of large actors in the food chain, in practice it seems likely the tilting would go the other way. Biases in decision-making tend to work in favour of powerful interests, not the powerless, so the more scope competition agencies have to interpret the rules to pursue broader objectives and support one group or another, the stronger the incentives for powerful interests to organize and lobby.

As a practical matter, in any case, any foreseeable international framework for competition would surely be based on existing common ground, not a new paradigm. In practice, competition law is not often used against poorer countries trying to strengthen producers' negotiating power. On the contrary, it would be exporters in richer countries that are more at risk of such action, were it not for legal exemptions for exporters. Several countries – for example, Canada and Australia – tolerate behaviour towards foreigners that would be illegal towards their own citizens, at the expense of some of the world's poorest.[31] Even in this area, national competition laws can help. China, for example, has used its competition law to counteract some of the effects of export cartels.

Competition professionals need to become more involved in international debates about improving major GVC participants' commitment to sustainability and human rights, such as the OECD's Responsible Business Conduct[32] initiatives. Over-cautious MNEs have sometimes resisted agreements on the grounds they could breach antitrust laws. In most cases, they are wrong and could be reassured, but in those cases where they are right the agreements can often be restructured in a way that is compatible with antitrust laws.[33] As well as providing legal reassurance, this could also help such agreements work more effectively with markets. There needs to be more dialogue and perhaps a greater willingness by competition authorities, especially the US Department of Justice, to provide letters of reassurance so that concerns about criminal cartel charges do not block desirable initiatives.

State dependence

Often the biggest distortions to competition come from state action, whether through state-owned enterprises (SOEs), regulations or government procurement. The state's role in international trade is increasing, not because it is increasing in any given country, but because countries with larger state involvement are becoming more prominent in the world economy and trade.[34]

In principle, competition law has a simple approach to state ownership, namely SOEs should be subject to the law like any other firm. In many cases, they are. India's Competition Commission struck a bold note in 2013 when it found an SOE (Coal India) to have abused its position, following a complaint from another public-sector company, and imposed its largest fine to date.[35]

However, unelected competition agencies have no business stopping governments restricting competition in some areas (for example the sale of weapons), so jurisdictions recognize, in rather different ways, some concept of "State Action" to exempt such policies from scrutiny. Jurisdictions vary greatly in the degree to which they subject the state's decisions to competition investigation and this raises difficult constitutional and political questions. Post-Brexit Britain may have to decide whether to replace EU State Aid control with a home-grown alternative for example. To what degree courts should defer to a foreign state's policies is a very hot topic of debate, particularly with regard to China where some of the most prominent businesses are state-owned.

Given this complexity, achieving "competitive neutrality" between public and private sectors globally is more of a process than a goal, and many different policy areas (not just competition law) must be involved. There should, however, be a growing realization that policies need to recognize the different environment created by GVCs. Just as governments need to recognize that trade policies that retaliate against "foreign" firms can backfire if those firms are part of a GVC with domestic firms, so "local content requirements", in procurement, for example, could be meaningless in a world in which products are not easily classified as local or foreign. The internationalization of business creates a strong logic for the internationalization of policy towards business, but logic is not always in the driving seat. It is ironic that nationalist economic policies are increasing at a time when they make less sense than ever.

Main recommendations

Recommendations for globalizing competition policy in the current climate must necessarily be modest. However, the following would be worth pursuing and business can play an important role:

- Existing competition regimes need to continue to become more joined up to deal effectively with GVCs. This might require legal changes (to assist in information sharing) in some cases, as well as continued improvement in day-to-day co-operation.
- Regional and bilateral enforcement could be deepened through, for example, joint decision-making between like-minded jurisdictions. It is important to establish clear rules on how cases will be allocated to bodies with overlapping responsibilities, particularly in regional arrangements.
- Even OECD countries need to work on legal convergence in the (fiendishly complex) area of "abuse of dominance", particularly for digital products and IPRs, because this will have ever more cross-border relevance as GVCs develop.
- It is essential and inevitable that different jurisdictions retain differences in how they apply their competition laws. Such differences need to be respected, but the more they can be made explicit and transparent, the more convergence there can be on the main body of laws.
- There needs to be a higher common standard on due process. Suspicions of biased decision-making could cause political tensions and harm investor confidence, so even the most unbiased agency needs to be transparent about its reasoning and analysis.
- Equally, defending competition authorities from political interference has never been more important; global businesses and other stakeholders should speak up.
- In a world of GVCs, the notion of an exempted "export cartel" makes less and less sense. It is high time developed countries with such provisions abolished them.
- Using GVCs to pursue social and human rights objectives can be compatible with competition law. Competition experts need to link up with NGOs and others involved in this work to ensure that agreements to promote social objectives do not breach the law. Competition law can help, too: NGOs and others concerned about the behaviour of dominant firms could consider complaints to competition authorities, perhaps with the advice of experts.
- Competitive neutrality between the public and private sectors matters, but approaches differ greatly worldwide, so change must be incremental. Competition authorities in emerging economies are helping to change attitudes and should be supported.

Endnotes

1. OECD, International Co-operation in Competition Law Enforcement, 2014, https://www.oecd.org/mcm/C-MIN(2014)17-ENG.pdf
2. See for example Fox, Eleanor M., “Antitrust Without Borders: From Roots to Codes to Networks”, International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2017, http://e15initiative.org/publications/antitrust-without-borders-from-roots-to-codes-to-networks/.
3. By ‘Global Value Chains’ in this paper, I mean supply chains that cross national borders, often involving some committed relationships between different levels.
4. Indeed there is not even agreement on the name itself: I use the EU terminology.
5. There is a knock-on effect on merger control, with the US agencies very reluctant to challenge ’vertical’ mergers, where the potential anti-competitive effects are typically similar to those arising in abuse of dominance cases. Time Warner/AT&T is a very rare exception.
6. For extensive discussion, see OECD, “Summary of Discussion of the Roundtable on Public Interest Considerations in Merger Control”, 2016, https://one.oecd.org/document/DAF/COMP/WP3/M(2016)1/ANN4/FINAL/en/pdf. Formally or informally, public interest considerations can affect cartel and abuse of dominance cases too, but they are most prominent in merger control. All OECD Competition Committee Best Practice Roundtables on Competition Policy publications are available at http://www.oecd.org/competition/roundtables.htm.
7. See OECD, “Cartels involving intermediate goods”, 2015, http://www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm.
8. See for example Kaziboni, Lauralyn and Reena Das Nair, “The beer industry in Africa: a case of carving out geographic markets?”, CCRED Quarterly Review, 2014, https://www.competition.org.za/review/2014/11/7/the-beer-industry-in-africa-a-case-of-carving-out-geographic-markets
9. For a discussion of the reasons, see OECD, Limitations and constraints to international enforcement, 2012, http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP3(2012)8&docLanguage=En.
10. See OECD, Cross-Border Merger Control: Challenges for Developing and Emerging Economies, 2011, http://www.oecd.org/daf/competition/mergers/50114086.pdf; OECD, Remedies in Merger Cases, 2011, http://www.oecd.org/daf/competition/RemediesinMergerCases2011.pdf; Davies, John, Antonio Capobianco and Sean F. Ennis, “Implications of Globalisation for Competition Policy: The Need for International Cooperation in Merger and Cartel Enforcement”, ICTSD and World Economic Forum, 2016, http://e15initiative.org/publications/implications-of-globalisation-for-competition-policy-the-need-for-international-cooperation-in-merger-and-cartel-enforcement/.
11. Geradin, Damien, “The Perils of Antitrust Proliferation: The Globalization of Antitrust and the Risks of Overregulation of Competitive Behavior”, Chicago Journal of International Law, vol. 10, no. 1, 189-211, 2009.
12. OECD, Roundtable on the Extraterritorial Reach of Competition Remedies, 2017, https://one.oecd.org/document/DAF/COMP/WP3(2017)4/en/pdf, p.16, box 3, quoting KFTC’s decision of 20 January 2017 (Qualcomm), Case number 2015Sigam2118, translated by the American Consumer Institute Center for Citizen Research, www.theamericanconsumer.org/wpcontent/uploads/2017/03/2017-01-20_KFTC-Decision_2017-0-25.pdf.
13. See, for example, Dedrick, Jason, Kenneth L. Kraemer and Greg Linden, “Who Profits from Innovation in Global Value Chains? A Study of the iPod and Notebook PCs”, Industry Studies Association, 2008, http://isapapers.pitt.edu/97/1/2008-15_Dedrick.pdf which notes that Apple obtains a higher share of margins in its supply chain than does, say, Hewlett-Packard, for whose products Microsoft and Intel hold intellectual property rights (IPR) and manage key standards.
14. See OECD, “Competition, Intellectual Property and Standard Setting”, 2014, http://www.oecd.org/competition/competition-intellectual-property-standard-setting.htm
15. See for example Hern, Alex, “ECJ to rule on whether ‘right to be forgotten’ can stretch beyond EU”, The Guardian, 20 July 2017, https://www.theguardian.com/technology/2017/jul/20/ecj-ruling-google-right-to-be-forgotten-beyond-eu-france-data-removed.
16. For two contrasting views, see Khan, Lina M., “Amazon’s Antitrust Paradox”, Yale Law Journal, vol. 126, no. 3, 2017, https://www.yalelawjournal.org/note/amazons-antitrust-paradox and Hovenkamp, Herbert, “Progressive Antitrust”, University of Illinois Law Review, vol. 2018, no. 1, 71-113, 2018, https://illinoislawreview.org/wp-content/uploads/2018/01/Hovenkamp.pdf.
17. Several commentators have suggested such a motivation for recent IPR licensing remedies, for example, seeing them as possibly intended to benefit local companies making use of foreign technology.
18. For example, Sobel, Yuni Yan, “Domestic-to-domestic transactions – A gap in China’s merger control regime?”, The Antitrust Source, 2014, https://www.americanbar.org/content/dam/aba/publishing/antitrust_source/feb14_

sobel_2_20f.authcheckdam.pdf notes that none of the mergers on which China's Ministry of Commerce (MOFCOM) has required remedies have been domestic, a record assessed more critically by Mariniello, Mario, "The dragon wakes: Is Chinese competition policy a cause of concern?", Bruegel Policy Contributions, 2013, http://bruegel.org/2013/10/the-dragon-awakes-is-chinese-competition-policy-a-cause-for-concern/.

19. See Neven, Damien, Padilla, Jorge and Mariniello, Mario, "Antitrust, regulatory capture and Economic Integration", ICTSD and World Economic Forum, 2015, http://e15initiative.org/publications/antitrust-regulatory-capture-and-economic-integration/ and Davies et al., supra note 10 for references to merger remedies that appear to shield local firms from the merged companies or provide for IP to be licensed at more advantageous terms to Chinese companies.
20. Neven et al., supra note 19, pp. 3, 6 cites criticisms of EU mobile network merger decisions as well as work by Bhattacharya et al. finding domestic bias in US court judgements.
21. Bradford, Anu, Jackson, Robert J. and Zytnick, Jonathon, "Is EU Merger Control Used for Protectionism? An Empirical Analysis", Journal for Empirical Legal Studies, vol. 14, no. 4, 2017 finds no empirical evidence for domestic bias in EU merger control. Abuse of dominance cases (e.g. Google) are more likely driven by a difference in EU and US competition philosophy than bias towards domestic firms.
22. For one reason to avoid bringing competition policy into the existing trade system, see Bradford, Anu, "International Antitrust Negotiations and the False Hope of the WTO", Harvard International Law Journal, vol. 48, no. 2, 2016, http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_48-2_Bradford.pdf.
23. As researchers at OECD have demonstrated, this is the case even when considering pension funds as shareholders. See Ennis, Sean, Pedro Gonzaga and Chris Pike, "Inequality: A Hidden Cost of Market Power", OECD, 2017, http://www.oecd.org/daf/competition/Inequality-hidden-cost-market-power-2017.pdf.
24. See references in OECD, Factsheet on how competition policy affects macro-economic outcomes, 2014, http://www.oecd.org/daf/competition/2014-competition-factsheet-iv-en.pdf, pp. 20-21, for example to studies finding that restrictions such as entry regulations aimed at preserving small shops perversely reduce employment in retail.
25. Often by measuring increased concentration at industry level – most famously in the 2016 report of President Obama's Council of Economic Advisers (Council of Economic Advisors, "2016 Economic Report of the President", The White House - President Barack Obama, 2016, https://obamawhitehouse.archives.gov/administration/eop/cea/economic-report-of-the-President/2016). However, markets are not the same as industries. An 'industry' of 10,000 local monopolies would lack competition; an industry of 10 firms competing nationally would not.
26. One of the most prominent economic papers is De Loecker, Jan and Jan Eeckhout, "The rise of market power and the macroeconomic implications", National Bureau of Economic Research, 2017. They present evidence that margins have risen from 18% above marginal cost in 1980 to 67% now. However, changes in production technology (more fixed costs), IPRs or even offshoring can contribute to this change without implying anti-competitive market power (although that might be a factor).
27. See publications by John Kwoka and responses referenced in Kwoka, John, "Mergers, Merger Control, and Remedies: A Response to the FTC Critique", 2017, http://www.antitrustinstitute.org/sites/default/files/Kwoka%20Response%20to%20FTC%20Critique%20of%20MMCR.pdf
28. Both from the left (see Reich, Robert B., "Big Tech Has Become Way Too Powerful", The New York Times, 18 September 2015, https://www.nytimes.com/2015/09/20/opinion/is-big-tech-too-powerful-ask-google.html?mtrref=www.google.co.uk&gwh=F701EE970BFC713068ACED31C67C1EA2&gwt=pay&assetType=opinion) and the right (see Meyer, Robinson, "What Steve Bannon Wants to Do to Google", The Atlantic, 1 August 2017, https://www.theatlantic.com/technology/archive/2017/08/steve-bannon-google-facebook/535473/).
29. The finding in some of this literature that entrepreneurship appears to be falling in the US is perhaps more worrying – although this is still less likely to be a result of the way antitrust law is enforced.
30. See, in particular, Lianos, Ioannis et al, Global Food Value Chains and Competition Law BRICS Draft Report, University College London, 2017, https://www.ucl.ac.uk/cles/sites/cles/files/food_report_1.2.pdf, pp. 45-56.
31. See Jenny, Frédéric, "Export Cartels in Primary Products: The Potash Case in Perspective" in Trade, Competition, and the Pricing of Commodities, edited by Simon J. Evenett and Frédéric Jenny, 99-132, CUTS International and Centre for Economic Policy Research, 2012; Horna, Pierre and Leonilla Papa, "Export Cartels in Times of Populist Protectionism: Challenges and Options for Young and Small Competition Agencies" [forthcoming].
32. OECD, "Responsible Business Conduct: OECD Guidelines for Multinational Enterprises", http://mneguidelines.oecd.org/
33. See OECD, "Competition Law and Responsible Business Conduct", 2015, https://www.oecd.org/daf/inv/mne/Garment-Footwear-Roundtable-2015-Competition-Law-RBC.pdf
34. See OECD, "Competitive Neutrality: Maintaining a level playing field between public and private business", 2012, http://www.oecd.org/competition/competitiveneutralitymaintainingalevelplayingfieldbetweenpublicandprivatebusiness.htm
35. The fine has been reduced on appeal, but through application of the normal appeal processes that any investigated firm could follow.

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