

THE CASE FOR INTERNATIONAL ANTITRUST

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ABSTRACT

Competition policy is made at the national level but a great deal of the business activity that it seeks to regulate takes place at the international level. Though it is universally accepted that some level of international cooperation is necessary to make regulation effective under these conditions, there is a considerable diversity of views on the question of how much cooperation is appropriate.

The presence of international activity distorts competition policy in at least two ways. First, it causes the preferred domestic policies of states to diverge from what they would be in the absence of such activity. States that are net exporters of goods sold in imperfectly competitive markets have an incentive to weaken their antitrust rules and states that are net importers of such goods have reason to tighten theirs. Second, the choice of law rules adopted to establish the jurisdictional reach of domestic law create an additional divergence between the substantive laws actually chosen and those that would be chosen by a closed economy. States that choose to limit their laws to activities that take place within their territory are better off if they also weaken their substantive laws. States that extend the reach of their laws generate overlapping jurisdiction and force firms to run a gauntlet of legal rules that includes the strictest elements of each state's laws, leading to a de facto regulatory standard that is stricter than that of any single state.

This chapter explains why these problems cannot be resolved through the sort of low levels of cooperation that dominate current international antitrust efforts. Information sharing in particular cannot address the distortions to competition policy generated by cross-border business. Choice of law strategies can improve the regulatory framework, but can only partially address the problem and even this would require a dramatic change to existing policies. What is required, then, is a deeper form of cooperation on the subject of substantive laws or international standards. Though cooperation of this sort is difficult to achieve, there is no other way to address the policy distortions created when national authorities try to regulate international competition.