COMPETITIVE COMPETITION LAW? AN ESSAY AGAINST INTERNATIONAL COOPERATION

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ABSTRACT

This paper draws on strategic trade theory to explore the conditions under which different national competition law systems can compete. I assume that each state seeks to maximize a weighted sum of producer and consumer welfare within its territory, the weighting in turn reflecting public choice considerations. I further assume the tolerance or promotion of inefficient forms of inter-firm cooperation and monopolization discourages investment in the protected economic sector and makes it less likely that firms in that sector will innovate.

Working within these assumptions, the question becomes whether states have sufficient incentives to discourage inefficient inter-firm cooperation and monopolization in cases where foreign consumers bear the lion's share of the costs of monopoly rents. In a static model, individual states should prefer such arrangements, resulting in a collective action problem due to global losses of welfare. If, however, protected economic sectors bear a sanction in the form of higher costs of capital and lower rates of innovation, the collective action problem may dissipate. The critical question thus becomes the strength of the assumption that private or state-sponsored protection reduces incentives for investment and innovation.

Strategic trade theory also addresses the institutional conditions for governments to engage in successful protection. I argue that the tolerance of organizational combinations that reduce global welfare but produce local benefits is simply one aspect of such protection. The core common problem involves governmental capacity to distinguish industrial structures that advance efficiency from those that reflect rent-seeking. In trade law, one asks whether governments should protect local industries to promote positive externalities. In competition law, the symmetrical question is whether governments should sanction foreign industries to deter negative externalities.

I conclude by considering governmental capacity to pick industrial winners and losers. The empirical case for governmental success at distinguishing efficiency-enhancing from rent-seeking industrial structures is mixed at best. Moreover, the instances where the distinction seems easiest to make–cartelization of primary products–more often involve greater governmental involvement in the promotion of inefficient industrial structures than in their dismantling. The implication of this evidence is that it is plausible to assume that protection resulting from competition policy, like protection produced by governmental intervention, does deter investment and innovation and thus contains its own punishment.