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Contribution

by

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UNCTAD

Developing Countries' Experience with Extraterritoriality in Competition Law

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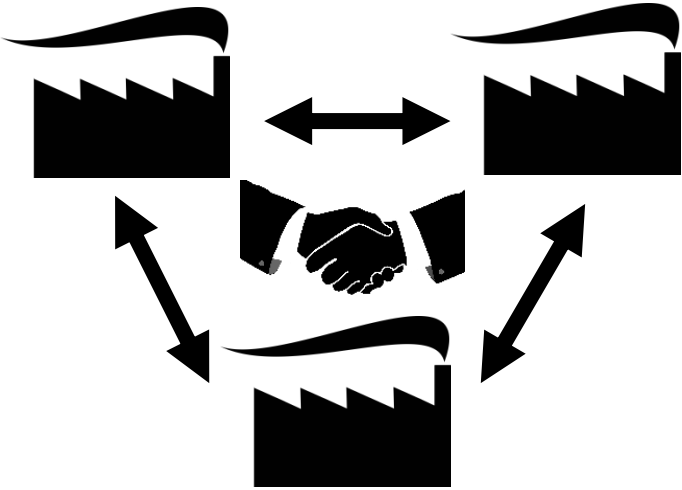
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The broader context

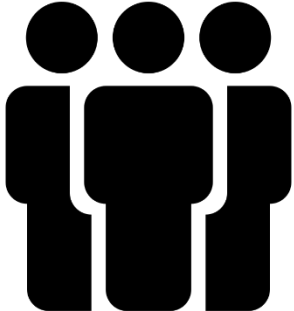
Competitive harm (harm arising from anti-competitive conduct) often stretches beyond a single jurisdiction

A State in which the firms undertaking anti-competitive conduct are based and operate



Price-fixers

Some other jurisdiction(s)



Consumers

Possible approaches

multilateral

- issue addressed at the multilateral level

hosting
state takes
action

- application of domestic competition law to outbound harm, that is harm affecting markets elsewhere

victimised
state takes
action

- application of domestic competition law to inbound harm, that is harm arising from conduct abroad → the case of extraterritoriality

Reality

multilateral

- the issue dropped from the WTO agenda
→ approach failed

hosting
state takes
action

- states care about national, not global welfare
→ lack of incentives → approach failed

victimised
state takes
action

- extraterritorial application of domestic
competition laws potentially possible,
however practically difficult

The Extraterritorial Approach

- developed in the United States
- originally contested but gradually adopted by a growing number of jurisdictions
- applies to all three pillars of competition law: agreements, dominance and merger review
- in some regimes based on interpretation of the pre-existing provisions, in other based on explicit provisions
- no uniform jurisdictional test
- difficult due to practicalities of transnational enforcement
- typically followed by the developed regimes

Extraterritoriality and Developing Countries

- their circumstances may (but need not to) magnify the challenges of extraterritorial enforcement
- little is known about developing countries experience in relation to extraterritoriality → this issue has not been studied in a comprehensive manner

This project

aims to fill in the existing gap by collecting and analysing data on developing countries experience with extraterritorial application of domestic competition laws, in particular by establishing:

- whether extraterritoriality has been embraced in domestic regimes, and if so– in what way
- whether there have been any actual cases of extraterritorial enforcement
 - if yes: what were they and how that enforcement experience differed from the enforcement in a domestic context?
 - if no, but domestic law provides for extraterritoriality: what is the reason behind that state of affairs?

the adopted method: a questionnaire



All comments are gratefully received at m.martyniszyn@qub.ac.uk
Access my research via SSRN, LinkedIn, Academia.edu, or Google Scholar

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