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Contribution

by

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Developing Countries’ Experience with Extraterritoriality in Competition Law

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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

Some other jurisdiction(s)

Price-fixers

Competitive harm

Consumers
# Possible approaches

<table>
<thead>
<tr>
<th>Multilateral</th>
<th>• issue addressed at the multilateral level</th>
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<tbody>
<tr>
<td>Hosting state takes action</td>
<td>• application of domestic competition law to outbound harm, that is harm affecting markets elsewhere</td>
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<tr>
<td>Victimised state takes action</td>
<td>• application of domestic competition law to inbound harm, that is harm arising from conduct abroad → <strong>the case of extraterritoriality</strong></td>
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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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