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A Comparative Analysis Of Competition And Anti-Trust Law For The Major Industrialized Nations

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ABSTRACT

Global investments have grew tremendously in the recent years. As a result, mergers and acquisitions are becoming a daily occurrences. To achieve their goals, multinational corporations have to go through the process of filing for permissions with the various antitrust authorities in various countries with different rules and regulations. This paper deals with the antitrust laws and rules and regulations in the three major regions in which most mergers occurs. The regions and countries under consideration are the United States of America, Japan and the European Union.

INTRODUCTION

Direct Investment has grown tremendously in the past few years. Most of the foreign direct investments have been between major industrial nations. Developing nations and countries with very small population size received limited or no foreign direct investment at all. The U.S. share of growth in the foreign direct investments have been, on average, near 9 percent in the last three years, of which the increase in direct investment in Europe is 9.2 percent, with Asia near 8.85 percent, and with the rest of the world, it is very minor. As a result mergers between international corporations are now almost a daily occurrence. Not only it is difficult to agree to terms of a merger between two companies, but many companies have to go through the process of filing for permission with the various antitrust authorities in the countries where they do business. Three of the most influential and powerful antitrust authorities are:

- The United States Department of Justice and Fair Trade Commission
- The European Union Competition Commission
- The Japanese Fair Trade Commission

When these three bodies communicate effectively, the mergers turn out well; however, proposed mergers often get rejected because of the vast differences of opinions and definitions between the US, EU and Japan. In order to alleviate these difficulties, greater harmonization between the laws in these three regions is vital. To illustrate this, an attempt has been made at first to present anti-trust laws within each area, then describe and compare the functions of the agencies involved, and finally to present case studies on certain mergers, as examples for dealing with anti-trust regulations.

COMPETITION IN THE UNITED STATES

United States has some of the strongest laws concerning competition of any industrialized country. The first antitrust laws dated back to the 1890's. It all began when "trusts" (or holding companies) were created to bring together all the firms in a particular industry, such *as The Sugar Trust, The Tobacco Trust, The Steel Trust.* These trusts were very large enterprises that dominated their industry and in some cases production worldwide. The largest trust was the *Standard Oil* Company, which was established in 1867 and owned by John D.

Rockefeller. The opposition to the trusts came mostly from farmers who protested against the high cost of rail transport to take their products to the cities, led to the passage of the first anti trust law: *The Sherman Act of 1890.*

Some of the practices banned by the antitrust law were:

- Monopolies
- Predatory pricing at below cost to drive out competitors
- Legal business practices including restrictions on opening hours, resale price, maintenance, and tie-in sales

Although this law was passed in the late 1800's, the Standard Oil, Company was not brought to court and broken up until 1910. In 1914, the *Federal Trade Commission (FTC)* was set up, and in 1934, the *Securities and Exchange Commission (SEC)* was created. Throughout the next few decades, the trend of breaking up trusts settled down and a new trend of merging companies together arose. The belief that big was beautiful in the corporate sector was given another boost by America's experience in World War II, when it was the big companies like Ford, GM and GE that were seen to have helped win the war by their extraordinary increase in wartime production. Finally, by 1960, a change in political climate brought a new wave of breaking up trusts. The new targets of breaking up trusts were now AT&T and IBM. The two cases had very different outcomes. The government's slow-moving case against IBM never made much headway before it was dismissed in 1982. However, two years after the IBM case collapsed, the U.S. government succeeded in breaking up the AT&T telephone monopoly. Today Microsoft is a large company that many claim to be monopolistic in nature. It is a company that since 1998 has been under investigation and continues to be under close watch from the United States government into the new millennium.

Today, the Bureau of Competition of the Federal Trade Commission (FTC) and the Antitrust Division of the U.S. Department of Justice (DOJ) share responsibility for enforcing laws that promote competition in the marketplace. Competition benefits consumers by keeping prices low and the quality of goods and services high according to the FTC. Several other laws have been passed regarding the issue of fair competition. One of these is the Robinson-Patman Act (1934), which is based on one fundamental principle: "to assure, to the extent reasonably practicable, that businessmen at the same functional level would stand on equal competitive footing so far as price is concerned," according to the FTC (2002). However, the Robinson-Patman Act was actually an amendment to the Clayton Act (1914). The Clayton Act regulates general practices that potentially may be detrimental to fair competition. Some of these general practices regulated by the Clayton Act are: price discrimination; exclusive dealing contracts, tying agreements, or requirement contracts; mergers and acquisitions; and interlocking directorates. The Clayton Act was passed as an extension to the Sherman Act.

Although tough antitrust laws have been passed in the United States for more than a hundred years, they have only been enforced sporadically throughout the century. The seemingly successful US antitrust model has been widely duplicated in other countries, such as Japan, Mexico, and Poland.

COMPETITION IN THE EUROPEAN UNION

In order for international markets as well as the individual markets of the European Union to run smoothly, policies on competition must be enacted and strictly enforced. These policies seek to level the playing field for all countries that trade with one another within the union. According to the European Union online (2002), "Competition policy seeks to encourage economic efficiency by creating a climate favorable to innovation and technological progress." These policies protect not only countries and governments, but also the consumers themselves. Consumers can safely buy imported goods with the knowledge that they are getting a fair deal. These policies simply keep competition healthy so that one large firm cannot dominate the entire market for a specific good or service thus setting price and quality standards.

The European Union adapted their laws of competition from those set forth in the Treaty of Rome (1957). Article 81 (previously article 85 in the European Community Treaty) covers agreements and concerted actions that interrupt competition between the EU member states. A restrictive agreement is an agreement where two or more

companies force one or more of the companies to accept a certain way of conducting business. A concerted practice is a restrictive agreement without formal contracts, just an understanding of agreement. Article 81 does not allow any practices that in any way try to restrict competition among the EU countries. According to Article 81, the following agreements are strictly prohibited under EU competition policy:

- Horizontal or vertical agreements that fix prices directly or indirectly
- Agreements on conditions of sale, investments, production or delivery quotas
- Joint sale offices
- Market sharing agreements
- Collective boycotting
- Agreements that isolate market segments

Not all agreements are outlawed by Article 81. Those seen as beneficial and that improve the manufacture of goods or help to progress technology may be allowed. Exclusivity and franchise agreements are among these agreements that are exempt from the rules.

Article 82 of the European Union's Treaty of States protects the nations against one company or a few companies from having a "dominant position." This position gives the company the ability to control market situations through a decrease in competition. It is an effective monopoly. The EU sees this as adversely affecting trade throughout its member nations. The company has the ability to set prices or trade restrictions as well as restrict supply to artificially increased prices. Simply, monopoly and oligopoly with price leadership position is banned.

Several regulations have been added to the EU Treaty in order to allow representatives to examine and make final decisions on potential mergers and acquisitions. Regulation 4064 reserves the right to veto merger requests between companies that could possibly create a dominant position and therefore impede "effective competition". The representatives examine the merging companies' product and the scope of its market. In addition, they look at how large the geographic market for the product will be. Finally, inspectors judge if the newly formed company is in harmony with the internal market. If everything is in order then the merger will be able to move on to completion.

Article 87 forbids member states from granting financial assistance to firms in their country that will hinder the competitive process for any firm inside or outside that country. In other words, a country cannot favor the industries within their country over those in any other country within the EU. This helps to keep trade in balance. This article covers not only government aid, but aid coming from private citizens and corporations as well. Few types of contributions have been exempted from this rule. Any contribution gained by contributing positively to society or for cultural conservation is allowed as long as it is not restricted to a certain product group. In addition, money donated to aid a company in rebuilding following a natural catastrophe is also permitted.

COMPETITION IN JAPAN

After World War II, competition laws were successively enacted in numerous free economies. In Japan, the Antimonopoly Act was established in 1947, and the Fair Trade Commission was established for its enforcement. Japan's first competition law gave rise to a full-fledged market economy and established economic democracy. In this respect, its achievements are of crucial importance. It was modeled after the United States antitrust law and the Antimonopoly Law established a free and fair competitive market. This policy was quite different from the traditional Japanese way of thinking; therefore, after the Depression of 1952, the Antimonopoly Law was relaxed in 1953. Throughout the decades, the competition laws of Japan, were highly debated and relaxed many times, until the decade of 1970s and the Miki cabinet came into office. After the oil crisis of 1973, the monopolistic market of Japan was criticized to the point that the Miki administration was forced to proposed a bill, which was recommended by the FTC to strengthen Japanese competition laws. After much debate, the bill was passed in 1977. This was the first time that the Japanese Antitrust Law was strengthened.

Since the late 1970's, large demands have been made by foreign countries for a more competitive and open Japanese market In response to these demands, the Japanese government began to actively pursue competition policy in conjunction with "deregulation," which has made tremendous strides. The Antimonopoly Act has now entered a turning point in meeting these demands. In this connection, the structure and role of the Japan Fair Trade Commission, which is in charge of the implementation of the Antimonopoly Act, are being improved.

Today, the purpose of the Antimonopoly Act aims to remove obstacles to free and fair competition in the market and ensuring the sound operation of the market mechanism. Its purpose is to:

- Assure the interest of consumers
- Promote free and fair competition, stimulating creative initiatives of firms, enlivening business activities and increasing the level of employment and people's real income by:
  - Prohibition of Cartels
  - Prohibition of Private monopolization (restrictions on mergers and acquisitions)
  - Prohibition of unfair trade practices

The Antimonopoly Act has been enacted not only to appease consumers, but also to help firms engage in free business activities in a free economy by eliminating unreasonable restraint on business activities and monopolization of a market.

Since the 1990's several changes have been made again, to strengthen Japanese competition laws. Some of these changes include:

- Reducing exemptions related to cartels
- Relaxation of restrictions on holding companies
- Abolition of the notification system for international contracts
- Reduction of exemptions for resale price maintenance
- Revision of the notification system for mergers
- Relaxation of restrictions on premium goods
- The enlargement of the FTC staff

All of these proposals have been made with the collaboration of the United States and most of them have been implemented since 1995. Today, Japanese competition law is, again, very similar to that of the United States, as it was in the late 1940's.

ANTI-TRUST AGENCIES

United States

For over six decades, the mission of the U.S. Antitrust Division has been to promote and protect the competitive process and the American economy through the enforcement of the antitrust laws. The antitrust laws apply to virtually all industries and to every level of business, including manufacturing, transportation, distribution, and marketing. They prohibit a variety of practices that restrain trade, such as price-fixing conspiracies, corporate mergers likely to reduce the competitive vigor of particular markets, and predatory acts designed to achieve or maintain monopoly power.

The Division prosecutes serious and willful violations of the antitrust laws by filing criminal suits that can lead to large fines and jail sentences. Where criminal prosecution is not appropriate, the Division institutes a civil action seeking a court order forbidding future violations of the law and requiring steps to remedy the anti-competitive effects of past violations. Many of the Division's accomplishments on these fronts were made possible by an unprecedented level of cooperation and coordination with foreign antitrust enforcement agencies, and the States Attorney General Offices. The Division is also committed to ensuring that its essential efforts to preserve

competition for the benefit of businesses and consumers do not impose unnecessary costs on American businesses and consumers.

The Division has provided more guidance to the business community in a shorter time than ever before, much of it jointly with the Federal Trade Commission. This guidance is in the form of newly revised and expanded joint statements of policy regarding the health care industry, licensing of intellectual property, guidelines on international operations, and an accelerated individual review process. The revisions lower the costs to business complying with the law by reducing uncertainty about the parameters of legal behavior. The guidance of the Division saves money for both business and the government by helping companies to structure and organize their operations in accordance with the law, thus avoiding the need for expensive litigation.

The Federal Trade Commission's (FTC) antitrust arm, the Bureau of Competition, seeks to prevent business practices that restrain competition. As a result, purchasers benefit from lower prices and greater availability of products and services. The Bureau carries out this mission by investigating alleged law violations and, when appropriate, recommending that the Commission take formal enforcement action. If the Commission does decide to take action, the Bureau will help to implement that decision through litigation in federal court or before administrative law judges.

The Bureau also serves as a research and policy resource on competition issues. It prepares reports and testimony for Congress, and may present comments on specific competition issues pending before other agencies. The Bureau of Competition has developed expertise in a number of industries important to consumers, such as health care, food, energy, and other professional services

Both the FTC's Bureau of Competition and the Antitrust Division of the Department of justice enforce the antitrust laws. In order to prevent duplication of effort, the two agencies consult before opening any case. The Commission’s antitrust authority comes primarily from the Federal Trade Commission Act, and the Clayton Act, both passed by Congress in 1914.

European Union

The European Competition Commission is an anti-trust agency that operates at the very heart of the European Union. Its role as the source of policy initiatives is unique; yet this role is not always clearly understood. The Commission has used its right of initiative to transform the framework established by the initial treaties into today's Competition Commission. The benefits for citizens and companies throughout the Union have been considerable and include:

- Freedom of movement
- Greater prosperity
- Less red tape

But the Commission has not done this alone. It works in those in partnership with the other European institutions and with the governments of the Member States. Although the Commission makes the proposals, all the major decisions on important legislation are taken by the ministers of the Member States in the Council of the European Union, in co-decision or, in some cases, consultation, with the democratically elected European parliament.

The Commission consults widely with interested parties from all sectors and all walks of life when preparing draft legislation. In addition to its power of proposal, the Commission acts as the EU executive body and guardian of the Treaties. It represents the common interest and embodies, to a large degree, the personality of the Union. The Commission's main concern is to defend the interests of Europe's citizens. The 20 members of the Commission are drawn from the 15 EU countries, but they each swear an oath of independence, distancing themselves from partisan influence from their home country.

The Commission's job is to ensure that the European Union can attain its goal of an ever-closer union of its members. One of the principal tasks here is to secure the free movement of goods, services, capital and persons throughout the territory of the Union. The Commission must also ensure that the benefits of integration are balanced between countries and regions, between business and consumers and between different categories of citizens.

Other national anti-trust agencies in Europe include the following:

- The United Kingdom Office of Fair Trading
- The United Kingdom Competition Commission
- The Sweden Konkurrensverket
- The Direccion General de Policia Economica y Defensa de la Competencia
- The Portugal Direccao-General do Comercio e da Concorrencia
- The Netherlands Competition Authority, The Ireland Competition Authority
- The Germany Bundedkartellamt
- The Finland Kilpailuvirasto
- The Swedish Competition Authority
- The Spain Tribunal de Defensa de la Competencia
- The France Direction Generale de la Concurrence
- The Belguim Ministere des Affaires Economiques Concurrence
- The Autria Wettbewerbsservice (BMwA).

Japan

The Japan Fair Trade Commission is the central anti-trust agency in Japan, and is established as an administrative organ of the state to achieve the purpose of the Antimonopoly Act. The Fair Trade Commission implements the Act Against Unjustifiable Premiums and Misleading Representations and the Act Against Delays in Payment of Subcontract Proceeds to Subcontractors, both of which are special laws complementing the Antimonopoly Act. The Japan Fair Trade Commission is administratively attached to the Prime Minister, and is positioned as an extra ministerial body of the Prime Ministers Office.

The Japan Fair Trade Commission acts as an administrative organization under the council system, consisting of a Chairman and four Commissioners. In implementing the Antimonopoly Act, the Japan Fair Trade Commission independently performs its duties without being directed or supervised by anyone else.

A unique feature of the Japan Fair Trade Commission is that, as an independent administrative agency, it has the quasi-legislative power of enacting internal regulations and the quasi-judicial power of implementing hearing procedures, in addition to the power as an administrative body. It has the power to designate unfair trade practices and premiums and it may enact internal regulations and regulations concerning the settlement procedures, reporting and certification.

The Japan Fair Trade Commission was empowered to implement the Antimonopoly Act and its special laws with the intention of removing political clout associated with the implementation of these laws. Such political clout arises because the Antimonopoly Act and its special laws, which prescribe basic rules of business activities in a free system and thereby constitute the foundation of the Japanese economic system, handle various matters, including conflict of interests.

Another reason why the Japan Fair Trade Commission was established is that, like a court trial, the settlement of violations of the Antimonopoly Act calls for neutrality and fairness. Furthermore, since these laws are applied to constantly changing situations, their implementation requires the expert judgment of experienced persons who have a wealth of knowledge in law and economics.

COMPARISON BETWEEN THE LAWS

Overall, the laws of the US, EU and Japan are similar because they all stem from the establishment of United States law at the beginning of the 20th century. The main laws that these agencies have focused on are the Sherman Act and the Clayton Act, both of which focus on the breakup of the conglomerate businesses in the beginning of the century. The major difference between the U.S. and EU is that while the U.S. usually focuses on protection of the consumer, the EU protects businesses and employees. Japan's competition laws mirror the U.S. to a greater degree than the EU. The major differences include lower worldwide visibility and less clout in the regulation of international mergers.

INTERNATIONAL AGENCIES

There are also numerous international anti-trust agencies in which Japan, the United States, and the European Union are all members of. The OECD's Committee on Competition Law and Policy is the world's premier source of *policy* analysis and advice to governments on how best to harness market forces in the interests of greater global economic efficiency and prosperity. Bringing together the leaders of the world's major competition, or antitrust, authorities, the Committee is the chief international forum for the regular exchange of views on important competition policy issues.

The Committee is supported in its mission by the Competition *Law, and Policy (CLP) Division* within the OECD's Directorate for Financial, Fiscal and Enterprise Affairs. The role of the CLP Division is to provide the Committee with analytical support and promote its reform platform around the globe. To this end, the Division prepares analytical papers, sector studies and policy recommendations, as well as offers hands-on support to governments seeking to strengthen their national competition frameworks.

The Asia-Pacific Economic Cooperation (APEC) is another international antitrust agency, established in 1989 in response to the growing interdependence among Asia-Pacific economies. APEC began as an informal dialogue group, but has since become the primary regional vehicle for promoting open trade and practical economic cooperation. Its member economies include Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States, and Vietnam. Its goal is to advance Asia-Pacific economic dynamism and sense of community.

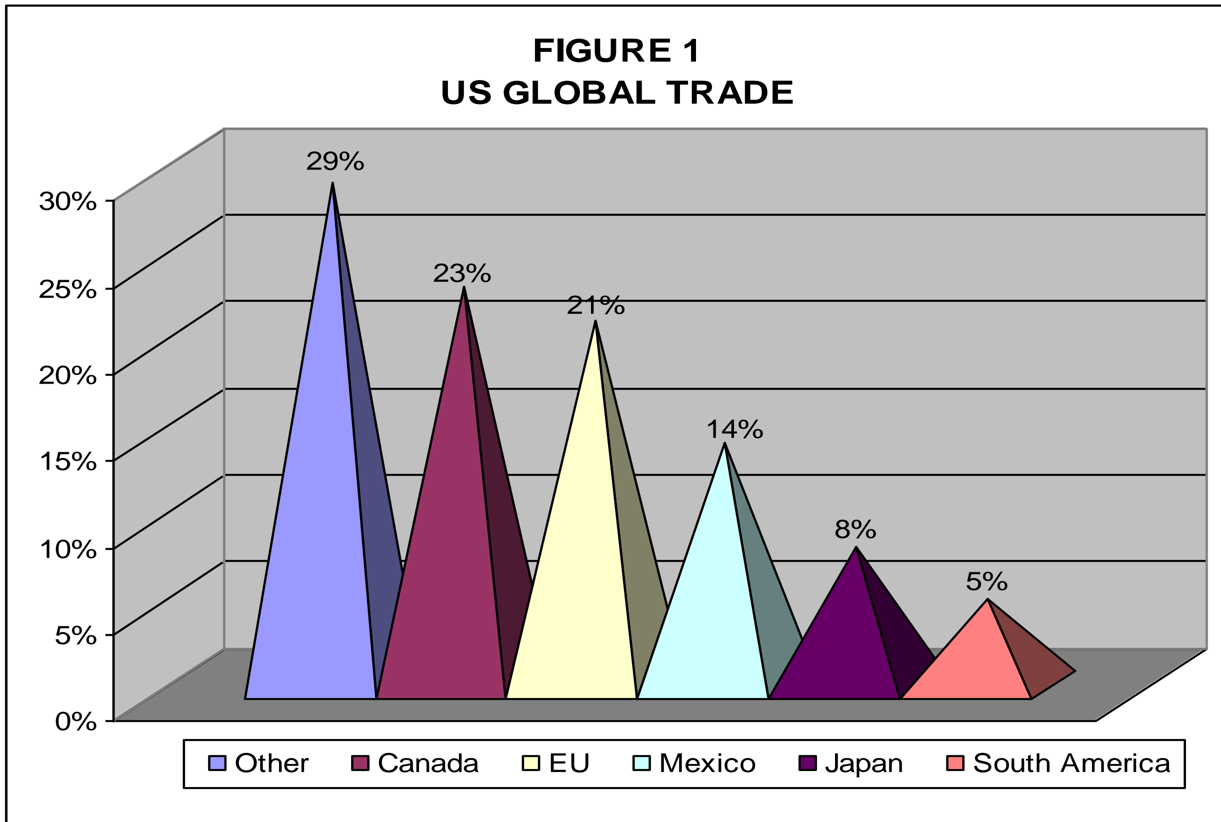
The Committee on Trade and Investment (CTI) coordinates APEC's work on the liberalization and facilitation of trade and investment. APEC Ministers agreed that the CTI would develop an understanding of competition issues, in particular competition laws, and policies of economies in the region. They agreed that the CTI must learn how competition laws and policies affect flows of trade and investment in the APEC region and identify potential areas of technical cooperation among member economies. It works to reduce impediments to business activity in fifteen specific areas as outlined in the Osaka Action Agenda: tariffs and non-tariff measures, services, investment, standards and conformance, customs procedures, intellectual property rights, competition policy, government procurement, deregulation, rules of origin, dispute mediation, mobility of business people and implementation of WTO obligations. CTI also provides a forum for discussion of trade policy issues.

CASES

Because the United States and the European Union are the largest regulatory bodies, they often make the final decision in Merger Cases. In addition, the EU as a unit or block accounts for the second largest portion of U.S. trade (see Figure 1) . As such, the cases will focus on the three major mergers proposals: Price Waterhouse and Coopers & Lybrand, American Airlines and British Airways, and GE and Honeywell. These cases bring up interesting differences in the regulatory procedures of the U.S. and EU.

Successful Mergers

Many of the important aspects in attaining clearance from regulatory authorities are present in the 1998 EU-US Cooperation agreement. Both agreements are supposed to increase the cooperation and dialogue between the two authorities. In the Price Waterhouse and Coopers & Lybrand merger, the companies took an active approach to ensure reciprocal notification and exchange of information when they signed a non-confidentiality agreement. This allowed the Competition Commission of the EU and the Department of Justice of the U.S. to exchange information freely.



Review for the merger between Price Waterhouse and Coopers & Lybrand, began in late 1997 and concluded in June 1998. Although on the facade, it looked as though problems may emerge, both the EU and U.S. authorities approved the deal. Some of the initial complications included the need to file with authorities not only in the U.S., EU and Japan, but also Switzerland, Canada and Australia because of the worldwide presence of both firms. In addition, they were merging two of the Big 6 accounting firms at a time when KPMG and Ernst & Young, two other of the Big 6, were also trying to merge. The proposed merger between two worldwide enterprises created the largest professional service network with revenues of over $15 billion.

The EU Competition Commission's initial concern was that the merger would harm competition in the audit markets for banking and insurance companies. However with the failed negotiations of KPMG and Ernst & Young, many of their concerns were put to rest. Another concern came as the Commission initially looked at data regarding competition within each country instead of data on a worldwide basis; this posed a problem because in certain countries, the two firms did dominate the market; however, on a worldwide basis, they did not. Ultimately, the EU agreed to emphasize worldwide competition. In addition, there was a great deal of opposition from competitors. More than 3/4's of European Multinational CFO's opposed the merger in addition to 71 percent of

their U.S. counterparts. The competitors' stance was based on concerns that the merger would allow a large increase in prices and in addition that it would lead to more consolidation among the "Big 6." In the final decision, the U.S. and EU both concluded that the merger didn't impede competition because it didn't create a dominant force in a unique market. According to Simon Evenett (2000), they all based their decision on similar reasoning in concluding "the auditing needs of these sectors (banking and financial services) were not so unique as to create any serious risk that the merger would lead to an increase in audit fees."

The main reason for success in the creation of Pricewaterhouse Coopers was the cooperation between EU & US. In addition to the non-confidentiality agreement, both the EU & U.S. defined the market as auditing and reporting on the financial statements of large, publicly traded companies that ultimately would not negatively affect competition in the industry. Another important factor was the lack of political and competitive influence. For example, although two competitors, KPMG and Ernst & Young, requested a review by the U.S. Senate, the US Senate declined.

Failed Mergers

Although there have been many agreements such as the 1991 EU-U.S. Cooperation Agreement and the supplementing Agreement of 1998, much disagreement remains between EU and U.S. competition authorities. Specifically these differences are:

- Differing procedures
- Differing levels of transparency
- Differing definitions, including how much emphasis should be put on vertical non price restraints

According to Simon Evenett (2000), American Airlines and British Air proposed semi-merger provides an interesting example of an alliance that was attempting to begin measures, which may eventually lead to a full merger in the future. Their proposition simply included the sharing of revenue and costs in transatlantic flights. Initially, the parties did not even think the EU would have jurisdiction because the wording in the Treaty of Rome limited its authority in international air transportation. In addition, no international air merger had ever been reviewed by the EU. However, as the regulatory review process began, a myriad of problems surfaced, and as it turned out both the EU and the U.S. had jurisdiction.

Although all the authorities agreed that the merger would impede competition if not modified in regards to the availability of slots at Heathrow, differences soon arose in regards to how many and in what way the airlines should get rid of their slots. Slots are basically available flights into an airport. Initially, the companies were asked to divest 168 of their 3,352 slots freeing 12 spots daily for competitors. However, the EU ended up determining that 267 slots would have to be given up for the merger to go through whereas the U.S. determined the initial 168 was sufficient. Further differences arose as to how the airlines should divest their slots. In the view of the European Union, slots were assets of the government; therefore parties should relinquish slots without compensation. They were concerned that without government regulation, all slots would end up in the hand of powerful airlines. This effect would be increased by the airlines getting an asset they paid nothing for adding a huge sum of money to their balance sheets. On the other hand, the U.S. viewed the slots as assets of the marketplace; therefore parties relinquish slots with compensation. They, along with the UK, had more faith in free-market and were not focused on how the merger would affect companies as much as customers. In addition, the Competition Commission went further than the U.S. or UK authorities when they asserted that the merger constituted an abuse of a dominant position, in violation of article 86.

The proposed alliance was further complicated by an open skies agreement, which the U.S. tried unsuccessfully to attain with England. An open skier agreement is a political agreement that would allow either country to fly to and from any airport in each other's country. This political issue became tied to the proposed alliance between American Airlines and British Airways and eventually was the reason for the Department of Justice not approving the deal.

As a result, political decisions over-taken jurisdiction decisions in this case. In addition, if there was greater exchange of information, the authorities may have agreed on an acceptable number of slots to give up and an acceptable way in which to divest them. For instance, the airline companies could have sold the slots but ensured that a fair proportion go to smaller airlines to avoid any abuse of dominant position in the market. Furthermore, problems stemming from political and competitive influences could have been avoided had information been kept more confidential within the authorities. However, these are options that are not viable due to a lack of coordination between the two authorities.

Although these factors played a role, the key point that prevented the EU and U.S. authorities from reaching a consensus was differing definitions. This is a common reason for disagreement because in general US antitrust law is set up to protect the consumer whereas EU antitrust law is designed to protect businesses, as shown in the proposed merger of GE and Honeywell. This proposed merger, beginning in November 1999 provides a very controversial example of disagreement between EU and U.S. competition authorities. Although there were signals for success such as the companies signing a non-confidentiality agreement and all parties communicating throughout the process, the EU ultimately did not approve the merger. Their differing vantage points and their procedural differences caused the main conflicts of opinion between EU and U.S. authorities. The EU was worried that the integration of Honeywell's avionics and GE's strength in jet engines could lead to dominance of the market through vast control over distribution networks, leading to a vertical non-price restraint. Furthermore, they focused on the effect on other businesses and were very concerned about economics of scale. According to Mario Monti, the competition commissioner, the merger would force prices down through Strategic Behavior, or offer package deals of products that less diversified companies could not offer.

In the U.S., the competition authorities operate with many checks and balances. For instance, they must get an order from independent judicial authority to block so as to avoid one group from unilaterally blocking a merger. Unlike the U.S., the EU Competition Commission can unilaterally block cases as a result of acting as investigator, judge and prosecutor all at once. This lack of transparency has been widely criticized by both Americans and Europeans and ultimately was one of the major reasons the merger between GE and Honeywell failed.

Throughout the merger process, the U.S. focused on the effect on consumers instead of other businesses. This is clear in the final list of objections by the EU where competitor's concerns were evident. Furthermore, the U.S. took the position that package deals would lower prices thereby increasing competition and efficiency for customers. They believed that there is no differentiation between strategic behavior and true increased efficiency. Another reason the merger was ultimately approved in the US was that they gave GE and Honeywell an opportunity to address the concerns of competitors. Alternatively, the final notice of objection was the first time GE and Honeywell saw some of their competitor's objections.

Because the two competition authorities could not ultimately come to a consensus, the merger was denied in June 2000. Throughout the process, the media put all the differences between the EU and U.S. competition authorities under a magnifying glass, particularly the lack of transparency in the EU Competition Commission. This is an issue that plagues many of the EU institutions who are currently working towards an acceptable solution. With the implementation of such a solution, the authorities of the EU and U.S. will be able to work more closely because of increased communication.

PROPOSED SOLUTION

International authorities are important because political issues often get tied to merger cases, as witnessed by the open skies proposal and the attempted merger between American Airlines and British Airways. The creation of an international forum will provide a non-biased forum for cooperation where parties can engage in open dialogue to agree on an acceptable level of transparency and on similar definitions, so as to avoid future conflict. It will be based on the framework laid out in the 1991 and 1998 agreements between the EU and US and expanded upon through organizations such as the OECD's Competition Law and Policy Committee, APEC, Japan, and other

major regulatory authorities. Tying an international merger authority to an existing organization will allow a transfer of knowledge and ensure a greater degree of success.

This global organization (forum) must eventually have tools to ensure enforceability but will begin simply as a forum for discussing issues. Developing the international merger authority slowly will alleviate the concern authorities and citizens of the EU and U.S. have about supranational organizations. Furthermore, slow implementation follows the path that most international organizations have taken. For instance, GATT began as a skeleton compared to its eventual transformation into the WTO. It is necessary to begin this process immediately because of the immense conglomeration of business that is going on internationally. Although it is important to avoid business mergers that impede competition, it is critical to differentiate such relationships from those that will ultimately help businesses, customers and countries. The only way to do so is to create an international merger authority that will encourage the EU, U.S. and Japan towards the increased communication that is vital for the harmonization of antitrust law.

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