

# *Competition on the Global Market: A Way Towards an Autonomous International Court for Global Competition Cases*

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Competition policy is a field where economists and lawyers have to work hand in hand to achieve efficiency and, in the international arena, global welfare. At the present, there is no internationally recognised official authority under the auspices of which there would take shape the global competition policy and, simultaneously, set up a core of global competition rules. Competition policy, still national or supranational in its nature, is, as a consequence, under strong influence of other national or supranational policies and so regulated by various laws that in their specific way address competition cases including those with an international element. Overlapping of jurisdictions, conflicts between substantive and procedural laws are unavoidable. Considering that full and simultaneous compliance with all those laws is a hard task to fulfil, it makes cross-border transaction much more risky, time consuming, and costly than is necessary. By setting up an autonomous international court for global competition cases not only would we get rid obstacles to efficient enforcement of competition but we could make global welfare flourish without depriving developing countries of their economic growth.

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## **Introduction**

In the era<sup>1</sup> when ideas, goods, services flow without any difficulties through all around the World, when information about producers, products or services they offer is easily accessible, when it is less and less dangerous and risky to move the production to the countries where the costs of production are lower, the question that arises out is: can we really speak about global competition?

With the difference to the regulation of international trade, there exist neither a set of international competition rules nor an international in-

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stitution which would deal with global competition problems and solve competition cases with an international element. This leads us to the conclusion that at least for now we cannot, from the legal point of view, talk about global competition law or global competition policy. Having regulated international trade without considering or, rather, without having the necessary framework to consider, competition issues that arise from such a trade cause serious problems in legitimising any state's policy trying to preserve a high level of welfare for its citizens.

### **Why is Global Competition Law Needed?**

Despite the fact that we cannot yet talk about global competition law<sup>2</sup>, this does not mean that competition on the global market does not exist. Before we look closer at the way in which international competition cases are dealt with, we should pose ourselves the question about justification to make competition on global level legally regulated. Considering that the us antitrust law was originally enacted not for preserving but stopping benefits deriving from competitive behaviour<sup>3</sup>, that perfect competition and so perfect efficiency can never exist, someone could even think that competition law is something that can cause more evil than good. Further on we would see that there is even a bit of truth in this, which is the case if e. g. competition authorities or courts, when dealing with the competition issues, legitimise as competition policy those practices, or better those aims that undertakings try to achieve, and that have nothing to do with competition.

Pure competition certainly does not need any regulation. Everyone is able to compete with his rivals in any way he finds efficient to win the primary position over his rivals. Where this kind of practice can lead us, it is not difficult to imagine. Concentration of wealth, power, and the ability to decide about the quality of life of other people in the hands of some winners is something that should not be allowed. On the other hand, too much restriction of freedom of action and much higher protection of competitors than is necessary can cause the stagnation of progress and reduction of welfare. At what point of the scale between these two extremes is the competition policy of the relevant market going to be at a certain period of time, it is hard to predict well in advance. Competition policy, which could be fully recognised only through decisions of competition authorities or court judgments, has never as its legitimate object just allocative efficiency. Through competition policy there are pursued also policies like social, environmental, employment and even political (e. g. achieving a single market in the EU).<sup>4</sup> And as soon as there is a

clash between various, in general allowed, recognisable policies it is hard to predict which of them is going to prevail and so decisively influence the decision of the case, except there, where the main objective of the sovereign institution which either makes or decides upon implementing various policies can be realised directly from hierarchically the highest legal act binding on it (e. g. achieving a common market in the EC Treaty).

But how about deciding on a competition case in which there is present also an international element? This could happen in the following cases:

1. National undertaking is acting and causing anticompetitive effects wholly outside national or supranational (e. g. the EU) territorial borders<sup>5</sup> of the institution hearing the case.
2. Foreign undertaking is acting and causing (anti)competitive effects within the national or supranational territorial borders of the institution hearing the case.
3. National or/and foreign undertaking is/are acting outside the national or supranational territorial borders of the institution hearing the case but causing the anticompetitive effects within it.
4. National and foreign undertaking are both acting and causing (anti)competitive effects within and outside the national or supranational territorial borders of the institution hearing the case (international merger).
5. National or foreign undertakings, each of them located and performing within different national or supranational territory and offering different products but at the same time enabling their customers access to all their products at once, which gives to this network a monopoly position (new-one network product).

In one of these situations, the institution dealing with a case, would not, after deciding to have a jurisdiction to hear the case, immediately apply<sup>6</sup> its competition law, but would be primarily balancing whether and to what extent national interests or, rather, the interests of its customers and undertakings, are affected compared with the interests of foreign ones. Taking into account that no institution would act against the national interests or in such a way as to reduce the welfare of its own citizens, in practice this means that in case 1 above, the institution is in general<sup>7</sup> not going to prohibit the anticompetitive behaviour of its national undertaking if the anticompetitive effects of such behaviour are going to rise and remain only and wholly outside its national or supranational territorial borders without at the same time causing its home cus-

tomers and consumers to be worse off.<sup>8</sup> In this case foreign customers' and consumers' welfare is not considered<sup>9</sup>, which can have the effect that, on the global level, allocative efficiency is below the level at which it could eventually be.

The same could happen with foreign customers' and consumers' welfare and overall allocative efficiency in case 2 above, regardless of the legality of the undertaking's action and its effects. In a case where there is found an obvious breach of competition law which would at the end result in being obviously worse off, the case raises no concern. Such an undertaking<sup>10</sup> would be found guilty for breaching competition law. But what if the foreign undertaking is behaving in conformity with competition law and at the same time there exists a risk that other producers within the importing country would run out of business?<sup>11</sup> If it eventually happens that competent authorities of the importing state, as a reaction to such a situation, take antidumping measures or either limit or completely prohibit the import of such goods or services and so causing customers and consumers to be worse off, this kind of practice is, in our opinion, not really in conformity with competition law, despite the fact that it could be in conformity with international trade law.

We are going to talk about other reasons that require enactment of international competition rules in the next chapter, in order to avoid unnecessary repetition of some problems that have to be dealt with together.

At this point, we could conclude only that until the time when we would not have uniform global competition rules, we could not talk about global competition, because deciding a competition case with an international element by using or being subjectively influenced by national interests cannot contribute to global allocative efficiency and to global welfare. Apart from this, we should consider that for achieving real global welfare, the efficiency gains should be distributed appropriately among the countries despite the continuous willingness of the business firms to move their production and resources to wherever the costs are lower.<sup>12</sup>

## **How to Deal with a Global Competition Case?**

### PRESENT SITUATION

The first thing that the institution in front of which the competition case is pending has to do is to assess under its own private international law

whether it has jurisdiction to hear and decide the case (enforcement jurisdiction). Without going too deep into this issue we can, in general, say that this issue is dealt with either under the incorporation test,<sup>13</sup> place of conduct test,<sup>14</sup> purpose availment tests<sup>15</sup> or, as regards mergers, the threshold test.<sup>16</sup>

After concluding that it has such a right, the next step is to determine the relevant market. This is nothing more than determining what exactly are the products that compete between them (relevant product market); on which exact territories the undertaking in question is in competition with the other undertaking producing the competitive products (relevant territorial market); taking into account that the present situation can reasonably change in a determined period of time, thus making the present anticompetitive behaviour allowed under competition law and vice versa.

The test to determine the relevant market can vary from country to country or supranational legal entity<sup>17</sup> and its application is limited to the relevant market located within its territorial jurisdiction.<sup>18</sup>

When dealing with a global competition case, the relevant market can extend even beyond national or supranational territorial borders. The case would be e.g. if some countries would promote research and development in the way that for others it would be hard to determine well in advance the characteristics and time when a new competitive product would enter the market, or capability of the products produced beyond the territorial borders of the present relevant market that could enter it far more easily and far more rapidly (e.g. through information technology network) than we could consider at the moment when dealing with the case in issue. In addition, there could also be a case when, considering the behaviour of undertakings on their nationally or supranationally territorially limited relevant market, no anticompetitive concern would be caused; but as soon as we take into account their global network and so the ability to jointly offer the customers a completely new, worldwide product (case 5 above), the case could be quite the opposite.<sup>19</sup> For such cases, the present approach – by trying to deal with competition cases with an international element by application of national competition laws – is by no means appropriate. This is another argument why the global competition law is needed.

After deciding about the jurisdiction issue and determining the relevant market, there remains nothing else than application of the substantive<sup>20</sup> competition law of the forum. What kind of policies competition

law can embrace we have already seen earlier in this article. The issue that has raised the most international concerns was that of legal permissibility and legitimacy to enact the law<sup>21</sup> to regulate the conduct that occurs wholly outside the territory of the forum but whose effects occur within it. This is the so called problem of extraterritoriality, i. e. extraterritorial application of the national law.

The problem was caused by the us court judgment in the Alcoa case<sup>22</sup> and it has not yet been solved. We agree that we should not allow the intended conspiracies to cause an anticompetitive effect, or behaviours causing an anticompetitive effect to be safe merely because they were agreed on or managed wholly outside the country of the forum. But on the other hand, there should not be considered just the national interest of the forum where anticompetitive effects occurred, but also the national interests and competition policy of the country of which the undertakings in question are nationals, and the national interests and competition policy of the country where the action de facto occurred.

The cases in which the court, apart from considering the effect, took into account also the intention of the parties, and the national interest of other countries are, for example, the us cases Timberlane,<sup>23</sup> Uranium cartel,<sup>24</sup> and Hartford Fire<sup>25</sup> – but the main problems still remain. It is hard to imagine that the institution dealing with the case would objectively and impartially balance the national interests of the forum and national interests of the other states (Maier 1983, 590–592; Meessen 1984, 788). It is also hard to accept the decision taken in the Hartford fire case that there is no ‘true conflict’<sup>26</sup> between competition laws, if the competition law of one country does not regulate one kind of behaviour or merely allows it (but does not require it) and competition law of the other country explicitly prohibits it, thus allowing for the institution of the forum (i. e. a national competition authority or a court) to decide the case. This is evident interference with the competition policy as a part of the economic policy of another sovereign state, especially if the state chooses the policy neither to order nor to regulate the competition within its territory (Lowe 1981, 265).

The same concern would occur if it would be allowed for the undertakings, when concluding the agreement which could raise some anti-competitive issues, to stipulate the submission clause about which state’s competition law is going to apply when assessing their behaviour. That is why this kind of contract clause is not permissible.<sup>27</sup>

It is evident that each single sovereign state has its own right to decide

over its economic policy,<sup>28</sup> on the other hand, it can abuse such a right for pursuing aims that are clearly in breach of competition law and the policy of other sovereign states without facing any legal consequences. This can happen either if a state acts in its own authoritative power<sup>29</sup> or if it enacts a law that compels private parties to behave in an exactly determined way<sup>30</sup>, thus causing the anticompetitive effects within others' national or supranational territorial borders.

#### WHAT SHOULD BE DONE IN/FOR THE FUTURE?

We have seen above that determination of competition policy and its implementation through enacting the competition laws and enforcing them is within the complete power of each sovereign state. This means that there are states that have not yet enacted their competition law statutes, states that have enacted them but their substance is quite the opposite or else interferes with the competition policy of other states, and there are states whose competition law and policy is in conformity with the competition law and policy of other states. For this assessment, comparing merely the letters of the articles or decisive sentences in the judgments or administrative decisions is not enough. What should be done is to compare the real values and national interests that crucially dictate the final solution of the case. Only at the point when these kinds of values and national interests are going to be shared all around the World are we going to be able to say that we have legitimate, uniform and completely effective global competition law.

At least for the present,<sup>31</sup> it is irrational to expect that such common values and national interests are going to be shared all around the World. Requiring that the undertakings from the poor and undeveloped countries should respect the same rules when acting and competing with undertakings from developed countries, without at the same time considering also the socio-cultural differences and environmental protection (see Jones and Surfin 2001, 1073; Bushman 1980, 253, 255–56), is something that really cannot be seen as fair especially if, with such an expectation, we hinder the economic progress within those countries. But this does not mean that there is nothing that could be done towards fostering the progress towards global competition law.

Under OECD recommendations,<sup>32</sup> some countries with almost the same level of development and quite common sharing of the competition policy values have concluded bilateral agreements for cooperation and coordination in dealing with global antitrust cases. Personally, we do

not believe that global competition law can be regulated in such a way. Mergers like Boeing/McDonnell Douglas or Gencor/Lornor can clearly show that despite such agreements there are always national interests affected in the concrete case (Peck 1998, 1169) to dictate the final solution. Apart from this, such an agreement can hardly be fully invoked in front of judicial authorities because it is always in the hands of the court to decide if acting in conformity with all the provisions of such an agreement is allowed under national or supranational law. There could be, for example, a different level of protection of privacy and/or important commercial information that would not allow for institutions having the jurisdiction to hear the case to exchange such information. This was evident also in the Microsoft case. The only real positive contribution towards global competition law that could be found in such bilateral agreements is the positive comity provision, under which the affected state is obliged<sup>33</sup> to ask the affecting state to take the action against its undertaking causing anticompetitive damages in the territory of the affected state before the latter is allowed to start enforcement under its own national law.

A completely separate question is that of how to solve international merger (case 4 above) when it is allowed under the national law of one country, but not under the national law of the other. Deciding on the merit, international merger should not be distinguished radically from other global competition cases, but there is one thing that could be done to avoid these contestable decisions.

By harmonising the thresholds that confer jurisdiction in international merger cases it would no longer be possible that conflicts of jurisdiction could arise. To achieve this, states should first of all (Fiebig 2000, 242) diminish their hegemony and reduce their budget monetary funds dedicated to dealing with so many (some of them not even important) international mergers.

The only solution that could properly deal with global competition cases is by setting up a new, completely autonomous international court for global competition cases. Embodied with the power to decide not only on hard-core anticompetitive practices but on all kind of activities performed by either states or private entities which can raise competition concerns and by considering some private international law issues,<sup>34</sup> considering objectively and impartially various national interests involved in each single case without forgetting to pursue the aim of moving towards uniform global competition law that is necessary if



we wish to achieve the real international – global – trade and worldwide welfare.

### **A Step away from the World Trade Organization**

Someone could legitimately pose the question of why we need to set up a completely autonomous international court for global competition cases if we can take advantage of the already established dispute settlement body within wto (Mitchell 2001, 358) – some of its agreements already covering competition matters (Mitchell 2001, 359–61; Matsushita 2004, 364) – and what counts the most, to deal jointly – within the same case – with both, trade and competition issues?

By regulating competition policy within the framework of the wto and at the same time modifying the existing wto settlement rules that would allow<sup>35</sup> also<sup>36</sup> private parties to bring the claim, both against the wto member states and other private parties, we could obtain the complete trade liberalization, with fully opened markets, fair and equal business opportunities for every participant in the market, transparency and fairness in the regulatory process, the promotion of efficiency, and the maximization of consumer welfare<sup>37</sup>.

It is more than evident that, merely under the existing set of the wto rules, such an aim cannot be achieved. Within the ambit of purely protectionist rules<sup>38</sup>, where the looking on the global trade is from each single national market perspective (Drexel 2004, 446) and where governments are allowed to undertake countervailing measures for protecting domestic industries regardless of the fact that in such a way they may trade off the economic well-being of their people, there is no room for effectiveness and distribution of welfare. The case is even more serious as there exists the real and lawfully supported<sup>39</sup> opportunity for the private restraints of international trade.

Whether there is any worth in having such an international legal system, in which the prohibition of governments' obstacles to the international trade could not be circumvented by private parties' practices, is an issue beyond the scope of this article; what does count, however is that this problem was made evident, and not only at the wto Singapore Ministerial Conference in 1996 – when the wto Working Group on the Interaction between Trade and Competition policy was established – but also in distant 1948 when the Draft fundamental document for the International Trade Organization (Havana Charter<sup>40</sup>) was written.

The attempt to regulate competition policy within the wto finally

failed at the Ministerial Conference in Cancun in 2003, when developing countries did not accept the proposal (prepared by wto Working Group on the Interaction between Trade and Competition policy – and mostly forced by EU Countries) to set up competition law rules within their national territories considering minimal standards agreed at international level. There is no necessity for deep analysis of the real reasons<sup>41</sup> for the Cancun failure, but what was even more than evident was the fact that by accepting the wto Working Group proposal, the developing countries would give away the advantages of special and differential treatment that they had been enjoying till then under the wto rules.<sup>42</sup>

Three points to consider are: that there really exists a huge gap between the levels of the economic situation, competition regimes, legal tradition, and cultural context among various states; that there have to be considered various national interests in deciding a specific global competition case; that there are products or national resources that raise the global competition problems without having anything to do with trade<sup>43</sup>. Therefore, from our point of view, the most efficient way to deal with the global competition issues, is by setting up an autonomous international institution which would consider in every single case all the relevant (national) interests, objectively and impartially balancing them, taking into account the positions, rights and duties conferred on the parties by bilateral and multilateral international treaties and, of course, always having in mind the main purpose of promoting, achieving, and protecting global competition and ensuring appropriate and fair distribution of welfare among consumers of various parts of the world.

### **Some Procedural Problems in Enforcing a Competition Case**

Everyone would agree that it would be worthless to have properly balanced competition law that mirrors the competition policy perfectly without being able to enforce it. As we have seen above, until the time when there would be an international institution that would have the power to primarily deal with global competition issues there would be national courts and national competition authorities dealing with such cases.

Being a competitor acting not only within national borders but also within the territories of other states<sup>44</sup> or being merely a consumer, who was a trade-off of the benefits that would otherwise occur in the case of fair competition, you should be aware which authority can decide on competition issues, for what purposes the authority is dealing with the

case, who has a right to start and conduct the procedure till the final decision on the case is taken, who has to provide the evidence of anti-competitive harm, and who pays the costs of procedure.<sup>45</sup>

We are not going to discuss all those issues in depth, but what everyone should know is that, if you wish to obtain damages for anticompetitive harm you have occurred, it is up to you to start the civil procedure in front of the court that has the right, under the private international law of the forum, to hear the case and to provide all the evidence necessary to prove your allegations. Considering that national legal systems differ among one another, that each of them has its own rationale, each of them mirrors its tradition, culture, state of development business firms and their advisors and so must learn to keep abreast of a multitude of legal systems. That such diversity in legal systems, and so in legal standards, increases the costs of doing business<sup>46</sup> around the World is not hard to realize.

In addition to all these concerns, we should not be surprised if, from time to time, we find ourselves, when presenting the case, in the position when it would be legally not possible to obtain the evidence or sensitive data located within the jurisdiction outside the forum, or when we could be deprived from full enforcement of the final judgment, which could be the case if the defendant did not have any assets within the jurisdiction of the forum. Additional obstacles to full enforcement of our rights could derive from so-called blocking statutes enacted by other states to protect their citizens from extraterritorial enforcement of other states' competition law.<sup>47</sup>

### **Conclusion**

It is not yet possible to speak about global competition law. Dealing with the competition cases having international element there are (supra)national competition authorities or (supra)national courts, deciding on jurisdiction and merit by applying their own laws and giving a partial priority to their national interests (Fox 2003, 923–24; Soma and Wiengarten 2000, 42; Fiebig 2000, 234–37).

Objective and impartial dealing with such international cases would be possible only by having a completely autonomous international court for global competition cases that could contribute to the expansion of those kinds of values and interests that would enable global competition law to be formed and enforced all around the World, and so making international trade fully beneficial for our common welfare.

**Notes**

- 1 About the changes in global economy see also Fox 1995, 8.
- 2 That is, in the sense of having a core of international – global – competition rules that would be binding all around the world.
- 3 See DiLorenzo n. d., 6.
- 4 Competition law has potent historical, economic, political, and social roots that make it a market nation's ultimate forum of public law. Short of reading a written constitution, a nation's competition law will tell you the most about its economic and political system and whether it puts its faith in the commands of the government or the operation of the market (Waller 1997, 395).
- 5 At this point, we intentionally avoid to using the appropriate form of the term jurisdiction in order to avoid confusion with the explanation hereafter.
- 6 As a legal act through which the state is implementing its competition policy at the concrete behavior.
- 7 Subject to the positive comity provision in the eventually existing international bilateral agreement on cooperation in competition matters. Concretely, we are going to discuss this provision hereafter.
- 8 The EU Commission decision about allowance of export cartels could be found in the Cobelaz case, 6 Nov. 1968, JO 1968, L 276/13, 19 and 29 (see Bellis 1979, 661).
- 9 The ECJ case that confirmed as legal such a behavior of national undertakings of the EU member states is *Javico* case (*Javico International and the Javico AG v. Yves Saint Laurent Parfums SA* (Case C-306/96). For the comparison see Guzman 2000, 6; Tuttle 2003, 322–27.
- 10 Also when acting through its agents, sub-agents, branches or even through its subsidiaries that which do not have their real autonomy (the EC Commission case: *Dyestuffs* case (*Aniline Dyes Cartel* (1969) CMLR D 23; the ECJ Case: *ICI v. Commission* case 48/69, (1972) ECR 619) or by direct, active sales to the purchasers located within importing territory (the ECJ case: *Woodpulp*s case (*Ahlström OY v. Commission* Case 89/85, (1988) ECR 1593).
- 11 Consider the ban the EU posed on the import of Chinese textiles.
- 12 The same Fox 1995, 12 and Drexel 2004, 440.
- 13 Assessing the place where the undertaking was incorporated, i. e. either has its seat or board of directors.
- 14 Here we consider whether the undertaking in question was actively conducting business within the territory above which the institution hearing the case has jurisdiction.
- 15 The test under which we have to assess whether the undertaking in question has an intention or was aware that its products can enter into

- the territory above which the institution hearing the case has jurisdiction.
- 16 Legal acts that regulate mergers clearly state in which cases the competent institution is going to hear and decide upon merger.
  - 17 For example, within the EU the test used is SSNIP and the percentage in price changing that is stated to cause switching of consumers is in the range between 5% and 10%, (see Wish 2001, 27–8).
  - 18 Jurisdiction – right – to hear and decide the case determined by the territory over which this right extends.
  - 19 See Soma and Weingarten 2000, where they present such a multinational network effect on the case of Broadcast-Media and News corporation.
  - 20 Some of the procedural law issues will be analyzed more closely in the chapter of this article.
  - 21 So called prescriptive jurisdiction, i. e. the right of states to make their laws applicable to persons, territory, or situations (Jones and Surfin 2001, 1039; Wish 2001, 392; Maier 1983, 582).
  - 22 *United States v. Aluminium Company of America*, 148 F. 2nd (Second Circuit, 1945).
  - 23 *Timberlane v. Bank of America*, 549 F. 2d 597 (9th Circuit) 1976 and *Timberlane v. Bank of America*, 749 F. 2d 1378 (9th Circuit) 1984.
  - 24 *In Re Westinghouse Uranium*, 563 F. 2d 992 (10th Circuit) 1977 and *In Re Uranium Antitrust Litigation*, 617 F. 2d 1248 (Seventh Circuit) 1980.
  - 25 *Hartford Fire Insurance Co. v. California* 113 S Ct 2891 (1993), 61 US Law Week 4855.
  - 26 Which only would require, under the principle of international comity, the necessary balancing of national interests that would be harmed by application of the law of the forum on the foreigners' conduct occurred abroad.
  - 27 People who live within a national territory have the right to decide on the basis of the self determination about the public order that would be in force within this territory and so about the economic policy that makes part of it. As a consequence, state lacks the power to enforce the foreign competition policy as part of a wider foreign economic policy. (See Lowe 1984, 519, 522, 524–525; Rosen 1981, 217, 222; Lowe 1981, 277.)
  - 28 It derives from the right of the citizens to decide about the conditions and the quality of the life they wish to live as a politically and legally organized society within clearly determined territorial borders. About the rule of noninterference in the field of competition, see Meessen 1984, 804.
  - 29 This case is regulated by the Act of State doctrine. For example, the countries, members of the OPEC can decide about exploitation of

- their national resources without being under supervision of any other supranational or international organization that would be able to assess on the merit the OPEC's decisions with regard to the anticompetitive effects such decisions can cause (see Sornarajah 1982, 142–143).
- 30 In this case private parties could rely on the so-called compulsion defense (see Jones and Surfin 2001, 1043; Sornarajah 1982, 144; Bellis 1979, 677).
- 31 As is evidenced also in unacceptance of the International Antitrust Code, prepared by the so-called Munich group.
- 32 About them see Waller 1997, 361–62.
- 33 This is not the case when the affecting country has no jurisdiction to hear the case or it is not prepared to deal actively with the case, or not expeditiously enough (see Jones and Surfin 2001, 169).
- 34 In the same way as the ECJ ruled about understanding of the Rome convention on the Law Applicable to Contractual Obligations, these being a consequence of the diversity of law of contracts and torts among various member states.
- 35 Under the present regulation, this is not possible, except for cases of dumping, state trade monopolies and companies enjoying exclusive or special privileges (Castrillon 2001, 101). See also Matsushita 2004, 370; Fox 1995, 9.
- 36 The WTO rules seek to supervise government restriction on trade (Charnovitz 2003, 829).
- 37 This is the key concept common to both, the WTO and competition policy (Matsushita 2004, 364).
- 38 See Mitchell 2001, 363, Griffin 1997, 40.
- 39 At least not prohibited (see the footnote 35).
- 40 See Fox 1995, 2–3.
- 41 For them see Stewart 2004; Drexel 2004, 435–37.
- 42 Consider Nottage 2003, 33–34, 44, where he also stressed the problem of capability and costs that the developing countries would incur in setting up the efficient competition law system.
- 43 In this regard see also Leon 1997, 164, 175 and Griffin 1997, 39.
- 44 The physical presence within the territory is completely irrelevant. What count are the results and effects of your activity.
- 45 For the reasons why private enforcement of the competition law in the US is much more frequent than in the EU see Baundenbacher 2002, 365.
- 46 About this, see also Fox 1995, 14.
- 47 About the British blocking statute see Jones and Surfin 2001, 1045, Wish 2001, 393 and, 407, Rosen 1981, Bushman 1980, Lowe 1981.

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