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The significance of antitrust regimes for globalisation

What competition regulators tell us about the state in a global economy

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Introduction

Motivation and objective

The objective of this paper is to examine the significance of antitrust regimes in the context of globalisation. Since the end of the WWII, and especially since the advent of neoliberalism and the demise of Keynesianism in the 1970s-1980s, the world economy has changed dramatically. International finance and trade now connect economies more deeply than ever before, while Multinational Corporations have multiplied and grown.

This transformation has sparked passionate debates. Many critics worry that the neoliberal ideas about minimal state intervention that shaped it have had many negative consequences such as increased inequality, environmental degradation, poverty, reduced innovation, instability, etc. Multinational Corporations are often seen as the engines behind these problems, taking advantage of globalisation to escape oversight and taxation while reducing states' sovereignty and having little democratic accountability.

Over the past decades, the number of national antitrust regimes has increased substantially. Additionally, in recent years calls for more stringent antitrust rules and for the rejection of the neoliberal consumer welfare standard have increased and been embraced by many key jurisdictions. This paper seeks to interpret these changes in the context of the broader discussions on globalisation and the role of antitrust within it. Some of the guiding questions will be: what can we expect from them? What forces are behind the spread of antitrust regimes and shape their behaviour? What impact do they have on international flows of capital and financial markets?

Exploring these questions has academic value, since it can provide a better understanding of globalisation, the role and power of states within it, and international finance and business. It is also of practical value to professionals working in transactions between Multinational Corporations as it will equip them with a deeper understanding of the political-economic context in which they operate.

Methodology

To lay the foundation for a satisfactory analysis, a broad literature review will first be carried out to understand both the larger debates on globalisation and how it intersects with antitrust policy. First, it will seek to provide an overview of the globalisation process and the transition from the Keynesian consensus to the Washington consensus. It will also

convey what some of the most important concerns are, such as the increase in inequality, the lack of effective control over corporations, the loss of sovereignty, etc.

After laying out the broad debates on globalisation, the paper will also explore how competition policy fits within them. It will lay out how the Chicago School, who were key intellectual proponents of neoliberalism and free markets, also pushed for a more lenient model of antitrust based around consumer welfare and economic efficiency.

In connection to this, it will also explore how antitrust regimes have been adopted around the world on the back of globalisation, and the influence of different approaches and types of regimes. Finally, it will provide an overview of two important academic debates in the intersection between globalisation and antitrust: whether freer trade makes antitrust unnecessary or whether it requires it as a complement, and whether regulatory divergence in antitrust regimes is advisable, or if we should rather push for harmonization, and how.

After this literature review, the relevant recent developments and trends in global antitrust policy will be sketched out, along with illustrative cases. For this, academic sources will be used as much as possible, but news articles, press releases and other alternative sources will also be used when appropriate. A quantitative summary of worldwide M&A activity and the forces behind it will also be presented using industry reports.

Combining this information with the debates and perspectives laid out in the literature review will yield relevant insights on globalisation such as the importance and resilience of global flows of capital, the incentives faced by states' antitrust regimes, the prospects for MNCs, and the potential for protectionism and international conflict.

It is important to note that this paper does not take a position on any of the debates accounted for in the literature review, such as whether globalisation and neoliberalism have been positive, whether trade and antitrust are complementary, or whether regulatory divergence or harmonization is advisable. It is not necessary to do so to obtain valuable insights, and the tools are given for the reader to decide whether to celebrate or criticise the contemporary regulatory landscape in relation to the positions she finds most convincing.

Structure

The paper will be divided in 3 chapters. The first will cover the history and theory of globalisation and neoliberalism. It describes the Keynesian consensus, its crisis in the

1970s, the neoliberal frameworks that emerged from it, the period of globalisation and liberalization that followed, and the main criticisms of it.

The second chapter deals with the intersection between globalisation and antitrust. It describes how the neoliberal shift of the 1970s occurred in the field of antitrust through the Chicago School of Antitrust's push for a more lenient enforcement policy focused on efficiency. It also describes the international landscape of multiplying antitrust regimes and their influences and approaches. The debates on the complementarity of trade and antitrust and whether to harmonise international regulations are laid out in the last part of the chapter.

The final chapter begins by describing how the goals and scope of antitrust are broadening in many jurisdictions. It also recounts several recent examples of global transactions challenged by antitrust regulators. After this, the aggregate figures on M&A in the world are presented. The second part of the chapter puts together this information with all the previous debates and considerations to lay out the lessons it reveals about globalisation, the role of state sovereignty, and the challenges for international business.

Chapter 1: The last wave of globalisation, the rise of international business, and the reframing of the role of the state in the economy

1.1. The Keynesian Consensus and its crisis

Since the end of the Second World War, and especially in the US and Western Europe, there was a general agreement that the government had a role to play in stabilizing the economy and ensuring full employment (Jahan, Saber Mahmud, & Papageorgiou, 2014). This came to be known as the post-war or "Keynesian" consensus, since it was based on the ideas of British economist John Maynard Keynes, who argued that intervention was necessary to regulate the economy and prevent recessions.

Keynesian economics became the dominant theoretical framework in the post-war period and came to be embedded in policymaking from both sides of the political spectrum (Jahan, Saber Mahmud, & Papageorgiou, 2014). As a result, states played an active role in managing the economy, using fiscal policy to stabilize aggregate demand and monetary policy to control inflation. They also invested heavily in public goods like education, infrastructure, and healthcare, and established welfare state programs to provide a safety net for citizens.

They did this against a backdrop of strong economic growth as economies recovered from the devastation of the first half of the 20th century. So much so, in fact, that the period is often labelled a "Golden Age of Capitalism" (United Nations, 2017). In many countries, post-war economic performance is remembered as miraculous (Japan, Italy, West Germany, Austria, South Korea, Belgium, or Greece), glorious (France) or record (Sweden).

The 1970s, however, saw a series of economic shocks that deeply wounded the consensus. Chief among these was the phenomenon of stagflation, whereby unemployment and high inflation appeared simultaneously (Jahan, Saber Mahmud, & Papageorgiou, 2014). Since, according to Keynesian theory, it was impossible that these two economic ills could present themselves at the same time, stagflation represented a failure of prediction that led to a loss of popularity and a rethinking of many of the Keynesian models and assumptions, as the authors recount.

1.2. Neoliberal theory

Neoliberal economists such as Milton Friedman, Friedrich Hayek, Gary Becker, Robert Lucas, and others were beneficiaries from Keynesianism's questioning. Although there were different intellectual approaches and schools of thought such as the Chicago School or the Austrian School of Economics, they all shared in their support for free markets and minimal state intervention. They advocated for free trade, deregulation, privatisation of state enterprises, cutting welfare programs, reducing public spending and deficits, lowering taxes, more lenient antitrust enforcement, etc (Ostry, Loungani, & Furceri, 2016).

They criticised different aspects of Keynesianism and state interventions. For example, Milton Friedman argued in 1963 that the Great Depression, which was seen as the prime representation of the failure of *laissez-faire* capitalism, had been the result of government failure, especially of the Federal Reserve's misguided monetary policy (Friedman & Schwartz, 2008).

Friedrich Hayek (1945) provided a comprehensive argument for the ineffectiveness of state intervention as opposed to a free price system through his theory on the use of knowledge in the economy. It began with the recognition that the relevant information to make economic decisions such as tastes, preferences, availability of resources, know-how on productive activities, etc. was distributed among millions of agents. According to the author, the price system was the only possible mechanism to condense this information into a single number which allows individuals to coordinate without requiring any one of them to access knowledge which is too vast and decentralised. Attempts to sidestep it through government direction of resources are therefore bound to fail, in Hayek's view, because they are necessarily uninformed.

Gary Becker developed the theory of human capital, which views education as an investment that increases an individual's productivity and earnings potential (1992). He also explored the economics of discrimination, arguing that employers that discriminated would face higher costs and thus be forced to change their behaviour by market forces, as well as those of marriage, crime, and many other topics. The underlying theme in his analysis was that individuals can be expected to make rational decisions based on their own broadly defined self-interest and can therefore be held responsible instead of reliant on the state (Becker, 1992).

Robert Lucas formulated the “Lucas critique” (1976). This was an attack on Keynesian macroeconomic policymaking, and on the use of statistical models to predict how the economy would respond to different policy interventions.

In his view this was a flawed approach because it did not consider the fact that people's expectations about the future could change in response to policy changes. This meant that the traditional statistical models would not hold and the observed relationships between economic variables (such as unemployment and inflation) could break down. This critique was especially poignant as it was made in the 1970s when economies were suffering stagflation and economists were puzzling over the failures of Keynesianism to predict and address it.

These contributions had a heavy impact among economists and policymakers. All the economists mentioned received the Nobel prize. Over time, the consensus shifted and policies across the world were consequently affected over the 1980s and 1990s.

1.3. Neoliberal policy and globalization

The elections of Margaret Thatcher in the UK in 1979 and Ronald Reagan in the US in 1980 were critical points for the implementation of neoliberal theory and the rejection of the Keynesian consensus (Steger & Roy, First-wave neoliberalism in the 1980s: Reaganomics and Thatcherism, 2010). Over long spells of 11 and 8 years respectively, they cut taxes, privatised and deregulated industries, rolled back welfare programs, relaxed competition policy, reduced inflation and defended neoliberal policies abroad.

The collapse of the Soviet Union in 1991 further entrenched the new neoliberal consensus. The failure of the socialist system seemed to validate Neoliberalism’s critiques on state intervention and left capitalism as the sole system with enough legitimacy and prestige. The sentiment was expressed by Francis Fukuyama in a famous article (and subsequent book) titled *The End of History?* (Fukuyama, 1989). In it, he put forward the thesis that the end of the twentieth century had seen the definitive triumph of liberal democracy over its ideological rivals of communism and fascism. The idea of the “End of History” refers to the end of ideological struggle after liberal democracy tied to a market system had proven itself superior to any rival conception.

Politically, this new consensus was reflected in left-wing parties’ embrace of “Third Way” ideology in the 1990s (Steger & Roy, Second-wave neoliberalism in the 1990s: Clinton's market globalism and Blair's Third Way, 2010). This approach advocates for a synthesis

of free-market capitalism and social democracy, with an emphasis on individual responsibility and community values. The traditional positions of left-wing parties therefore shifted to accept the core neoliberal arguments, signalling the new consensus. A distinctive moment in this regard was Bill Clinton's 1996 State of the Union Address in which he famously declared that "the era of big government is over" (Clinton, 1996).

International economic institutions created in the 1940s such as the World Bank and the International Monetary Fund were another area where neoliberalism had a deep impact (Stiglitz, 2002). They encouraged developing countries to embrace international trade and investment, as well as to commit to internal reforms to implement fiscal discipline, tax reform, deregulation, privatization, rule of law, exchange rate stability, and other neoliberal-inspired policies. This set of recommendations became known as the Washington Consensus, as Stiglitz explains in his book.

In Europe, the European Community and, after 1993, the European Union created a liberalised common market where goods, capital and people flowed unrestricted. In pursuit of this goal and to create fair competition, it restricted member state's capacities to subsidise and intervene their own industries (European Parliament, 2022).

The last two decades of the twentieth century also saw the two most populous states in the world embrace liberalization. From 1978 onwards, China embarked under Deng Xiaoping on a process of "reform and opening" which implemented market-oriented reforms and relaxed state direction over the economy (Garnaut, Song, & Fang, 2018). India did the same after 1991, allowing foreign trade and investment and lifting the heavy regulatory burden that existed for its private sector (Cassim, 2015). As a result of these reforms both countries experienced record economic growth. India jumped form 1.25% in the three decades after independence to 7.5% (OECD, 2007) while China averaged over 9% after its reforms (World Bank, 2023).

China's entry into the World Trade Organisation in 2001 was another milestone for neoliberalism. The world's most populous country, and formerly a stalwart of socialism and central planning, became officially integrated into the world economy amid a process of rapid growth (Levy, 2018).

As a result of this wave of liberalizations, the world economy changed substantially in what came to be known as globalisation. Trade as a percentage of global GDP jumped

from 25% in 1970 to 61% in 2008[1] (World Bank, 2023). The stock of Foreign Direct Investment as a percentage of world GDP rose from slightly above 5% in 1980 to around 30% in 2011 (Subramanian & Kessler, 2013).

In 1970 there were roughly 7,000 Multinational Corporations (MNCs), while in 2000 there were 38,000 and in 2008 the figure was 82,000 (OECD, 2018). They also comprise a large portion of the economy, contributing around a third of world global gross output[2] (Backer, Miroudot, & Rigo, 2019).

Nevertheless, concerns that they would take over the economy have not materialised. In the US, their share of private sector employment and of capital spending has remained roughly constant (Fritz Foley, Hines Jr, & Wessel, 2021). The authors also show that their activities have become more international, with a growing share of American MNEs' workers and profits now coming from overseas.

Ultimately, globalisation has meant a reshaping of the world's political economy (Di Giovanni, Gottselig, Jaumotte, Ricci, & Tokarick, 2008). The effects of this change are a widely debated topic both in public debate and in academia, as will be shown in the next section.

1.4. Critiques of globalisation

One of the most prominent critics of globalization is Joseph Stiglitz, a New Keynesian, Nobel prize-winning economist. He criticised Hayek's view of prices as informing coordination effectively and made many other contributions similarly questioning the efficiency of markets in the face of externalities and imperfect information (2009).

Because of these failures, unfettered markets are seen by him to have failed to deliver the benefits promised. Instead, Stiglitz argues, they have increased inequality both within and between countries by creating winners and losers, the winners typically being the owners of capital and highly skilled workers, and the losers being low-skilled workers and those who have lost their jobs due to outsourcing and automation (2002). In his view, this has been aided by unfair trade agreements that bend the rules of the game in favour of financiers and other powerful special interest groups in rich countries.

[1] In the decade after the financial crisis this figure trended slightly downward. In 2021 it was 57%.
[2] Last data available is for 2016.

As relates to financial markets, inequality and deregulation are regarded by Stiglitz as having led to economic instability, as seen during the 2008 global financial crisis (2012). The reason he offers for this is that the concentration of wealth in the hands of a small elite has led to a speculative economy that is more prone to bubbles and crashes.

Dani Rodrik of Harvard University has similarly criticised the way globalisation has developed, arguing against the "one-size-fits-all" approach (2002). Like Stiglitz, he criticises the treaties that govern international trade and investment (2018). In his view, as they moved from direct reduction of tariffs to harmonization of regulations on labour, investor-state disputes, intellectual property, public health, the environment, and other domestic topics it became less obvious that they were beneficial for the economy. Instead, they have removed the possibility for legitimate regulatory divergence and have been captured by other special interest groups keen to extract rents from developing countries. Examples of this would be pharmaceutical companies seeking to enforce strict patents abroad or financial services giants lobbying against capital controls by any countries, even in conditions of financial crisis.

Furthermore, Rodrik argues that these new export-favouring special interests block discussion of other optimal regimes, for example in tax-and-subsidy competition, protecting "races to the bottom" that benefit large multinationals (2018). He makes the case that the economic effects of the current regime of globalisation are not unambiguously positive, especially if we consider the redistributive effects that arise from its capture by new special interest groups and MNEs that capture most of the efficiency gains.

Underlying Rodrik's critiques is a view of markets and states as complementary. Regulatory and political institutions are needed, according to him, to provide an effective framework of supervision, intervention and compensation that make markets work more optimally (2011). It is for this reason that unfettered globalization of the neoliberal type ("*hyperglobalization*" in Rodrik's language) has failed and produced inequality, environmental degradation, and many "losers": its "weakly embedded" markets lack the necessary governance.

> There is no global antitrust authority, no global lender of last resort, no global regulator, no global safety net, and, of course, no global democracy. In other words, global markets suffer

> from weak governance, and are therefore prone to instability, inefficiency, and weak popular legitimacy (Rodrik, 2011, p. xvi).

This line of reasoning leads Rodrik to draw a trilemma between democracy, national determination (i.e., the nation state) and economic globalisation (2011): if a country prioritizes democracy and national sovereignty, it will have to limit globalization to some degree to protect its citizens and its national interests. On the other hand, if a country prioritizes globalization and national sovereignty, it will have to limit democracy to make decisions that are in the interest of international economic integration. Finally, if a country prioritizes democracy and globalization, it will have to restrict national sovereignty to participate fully in the global economy.

He endorses the first option: limiting globalisation to preserve democracy and national determination. In his view *"democracies have the right to protect their social arrangements, and when this right clashes with the requirements of the global economy, it is the latter that should give way"* (2011). More importantly, however, he urges governments to recognise these trade-offs and be explicit about their choices.

Another prominent critic of globalisation and neoliberalism is David Harvey, a Marxist geographer. He has defined neoliberalism as a response to a crisis of accumulation in the 1970s (2005). Capitalists had seen their profits and power threatened, and sought to remedy this through neoliberalism, expanding the role of the market and reducing the power of the state over it. He has also argued that neoliberalism has led to a new form of imperialism, characterized by the dispossession of resources and land from the global South (2009).

Finally, Cambridge economist Ha-Joon Chang has challenged the conventional view of free trade as an engine for economic development (2003). Instead, he argues, state interventions were key for achieving wealth and development in the Now-Developed Countries. Today, these same countries are preventing developing nations from doing the same through the neoliberal orthodoxy of the IMF and the World Bank, thus "kicking away the ladder".

Chapter 2: The field of antitrust in the context of globalisation and international financial markets

2.1. The impact of the Chicago School on antitrust enforcement

The neoliberal turn in the 1970s and 1980s also had an impact in the field of antitrust legislation and enforcement: the legal framework designed to promote fair competition in markets by preventing monopolies, cartels and other anti-competitive practices.

During the Keynesian era that began in the aftermath of the Great Depression, antitrust enforcement was made more stringent. This was part of a broader policy regime that saw active government intervention in the economy as essential for guaranteeing the stability of the system as well as for achieving several other social goals such as equality or social justice (Glick, 2019).

The goals of competition policy in the US were thus expanded to include "preventing the rising tide of concentration", control of vertical and conglomerate mergers, and even protecting political democracy (Glick, 2019). The author lays out how enforcement was highly strict, with dominant companies being highly vulnerable to monopolising charges for a variety of different behaviours. Mergers were also strongly scrutinised, with the expansion into vertical and conglomerate mergers and the prevention of horizontal mergers with combined market shares as low as 5% in the national market and 7.5% locally (Mueller, 1996).

As the Chicago School rose to prominence, it challenged many of the beliefs that had been held by most economists, judges and regulators on the appropriateness of competition law. Their emergent challenge was put forward in 1956 by Aaron Director and Edward Levi, who made the case that "the conclusions of economics do not justify the application of the antitrust laws in many situations in which the laws are now being applied" (1956).

According to them, only mergers to monopoly and price-fixing cartels were legitimate concerns for antitrust, while other behaviours previously scrutinized such as vertical integration, tying price discrimination, resale price maintenance, and exclusionary conduct were not. They also began to shed doubt on the stability of cartels and the difficulties of achieving and exercising monopoly power, while calling for a radical reduction in the scope and enforcement of competition law.

Neoliberal ideas and the Chicago School continued to gain influence, especially in the 1970s. Phillip Areeda and Donald Turner (1975) questioned the harms from predatory pricing and developed an influential and more lenient rule to determine its illegality. Oliver Williamson (1968) called for considering the potential efficiency gains from mergers and showed that these could easily be large enough to offset the negative effects of monopoly pricing.

Also linking efficiency and size, Harold Demsetz (1973) and Yale Brozen (1971) argued that high concentration was not necessarily bad but could be the result of natural competition if it arose from some firms' superiority. They therefore made the case that market structure alone does not determine market performance, and that public policy should focus on promoting competition and protecting the consumer rather than small businesses.

Judge Robert Bork's book "The Antitrust Paradox" (1978), came to be the most influential text among the many produced by the Chicago School criticising antitrust. It has been cited directly in more than 100 court cases (Blair & Sokol, 2012), and become emblematic of the intellectual movement. In it, Judge Bork drew on the contributions of other Chicago School thinkers and articulated a defence of a more economically focused approach that prioritized consumer welfare and efficiency over other social and political considerations. The paradox referred to in the title of the book was that antitrust enforcement artificially raised prices by protecting inefficient enterprises from competition, thereby causing the effect if sought to avoid.

His definition and defence of the consumer welfare standard as the guiding principle in antitrust analysis was his main contribution. Such standard meant adopting economic efficiency as the sole criterion to decide on the legitimacy of corporate behaviour. It also meant discarding the previous focus on market shares and industry structure, and vastly reducing the scope of intervention.

These and other contributions by other Chicago school thinkers had a profound impact on antitrust enforcement. As the court citations of Bork's work show, they shifted the consensus among regulators and practitioners and succeeded in changing antitrust enforcement (Glick, 2019; Mueller, 1996).

Many practices that had previously been considered illegal *per se* such as horizontal price fixing or resale price maintenance now required further proof to warrant action (Glick,

2019). The author also shows how a more permissive approach to mergers was adopted, and the reliance on market shares rejected. More generally, he points out how the hurdles required to prove anticompetitive behaviour in general were lifted, and a more lenient approach adopted.

The curtailment of antitrust was part of the neoliberal turn of the 1970s. The discussion of its effects and benefits is therefore an important part of the broader debates on globalization. Many scholars denounce that the narrow focus on economic efficiency (the consumer welfare standard) has proved harmful since it ignores many of the negative impacts of industry concentration innovation (Glick, 2019; Hovenkamp, 2020; Autor, Dorn, Katz, Patterson, & Van Reenen, 2017; Gutiérrez & Philippon, 2017). Some of the most common concerns are lower wages, increasing inequality, unchecked economic and political power for big corporations, increased profit margins, harm to consumers or reduced innovation.

2.2. International antitrust: multiplication of regimes and varying approaches

From the 1980s onwards, the number of countries with antitrust regimes skyrocketed as many countries transitioned to market economies (Chilton, Bradford, Megaw, & Sokol, 2018). This study counts that, in 1979, just 41 jurisdictions had them, while by 2010 the number was 135 (129 countries and 6 regional organizations). However, even though neoliberalism was a global phenomenon, the influence of the Chicago School's ideas on antitrust regimes outside the United States was less marked (Bradford, Chilton, & Lancieri, 2019).

These authors document the global adoption of the Chicago School's recommendations. On the one hand, they identify that efficiency defences, a core element of the Chicago School's contributions, are widely recognised. However, many jurisdictions still condemn many of the practices that the Chicago School exempted from scrutiny such as resale price maintenance, predatory pricing, exclusionary conduct, vertical and conglomerate mergers, etc. As relates to the explicit goals of antitrust regimes, about as many embrace efficiency related goals as do non-efficiency related goals, and double that number recognise both types. This illustrates how the sole focus on efficiency is far from the norm. Indeed, antitrust enforcement continues to be used as an instrument of social or industrial policy in many countries (Bradford, Chilton, & Lancieri, 2019).

The EU, which is the third largest economy in the world (IMF, 2022), has come to share many of the core elements of the Chicago School program, but also presents important differences. Consumer welfare has indeed come to be a central goal of its antitrust regime, although its interpretation of the principle differs from the American view, and it shares the stage with other objectives such as market integration (Bradford, Chilton, & Lancieri, 2019). Furthermore, the authors show that it has a more restrictive approach towards many of the practices that the Chicago School deemed pro-competitive such as vertical and conglomerate mergers and many types of unilateral conduct.

One key area of difference between European and American approaches to antitrust has emerged in digital markets, and in particular data protection. Whereas the US focuses on economic efficiency and regards personal data as an asset, the EU understands data as an inalienable right and uses competition law to protect personal freedom against the large internet companies which act as data aggregators (Lancieri, 2019).

Figure 1 shows data from the Competition Law Index (CLI), the most comprehensive effort to measure the stringency of competition law regulation globally, which has data up to 2010. As can be seen, it has been increasing for most of the period since the introduction of the first antitrust laws in Canada and the US, but especially after 1990.

Average CLI Scores for Countries with Competition Laws, 1890 to 2010

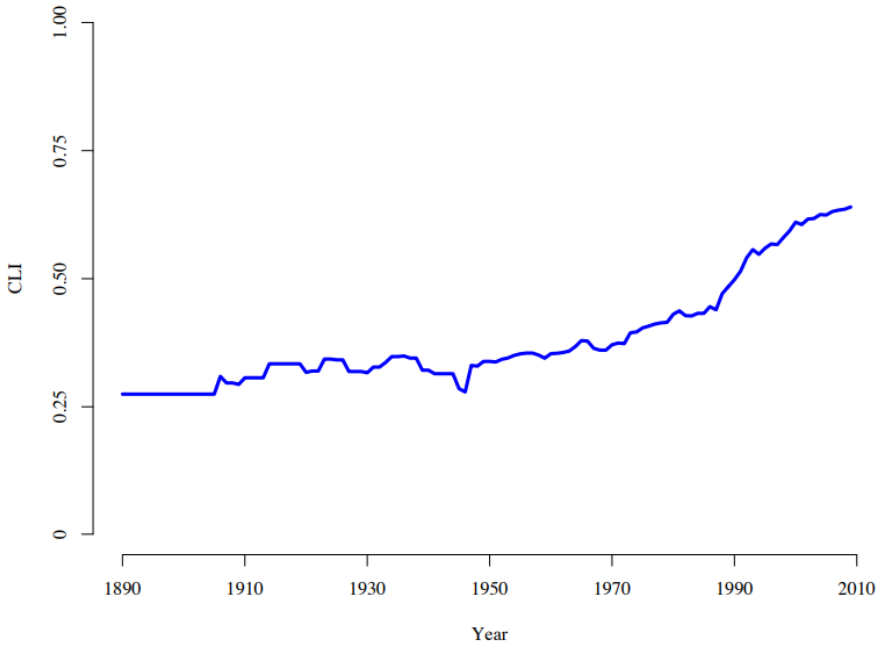

Figure 1. (Bradford & Chilton, 2018)

Country level data from the Index also shows that stringency has increased through the second half of the 20th century in many key jurisdictions such as Canada, the US, the EU, Germany, the UK or Japan (which has one of the highest scores). The influence of the Chicago School's minimalist approach is nowhere to be appreciated in the index, even for the United States. This is not to say that such an influence does not exist. Indeed, the authors recognise its existence in other papers (Bradford, Chilton, & Lancieri, 2019). However, their work shows that it is difficult to measure and may be often exaggerated.

Nevertheless, even if most antitrust regimes today don't embrace the Chicago School's efficiency-only antitrust focus, their spread is still tied to globalization and the spread of market economies after 1950 and especially after the 1970s (Chilton, Bradford, Megaw, & Sokol, 2018). China introduced a general competition law in 2008 (People's Republic of China, 2007). Russia did the same in 1990 after the collapse of the USSR (OECD, 2013). More broadly, during the Cold War 20 countries adopted competition law, and between 1990 and 2010 78 jurisdictions did (Chilton, Bradford, Megaw, & Sokol, 2018). In the European Union, antitrust harmonization is an important element of the single market (European Parliament, 2022).

Today, competition policy "has become an essential element of the global economy's legal and institutional framework" (Anderson, Kovacic, Müller, Salgueiro, & Sporysheva, 2020).

2.3. The trade and antitrust debate: complementary or exclusionary?

The relationship between globalisation and competition law is a topic of debate among academics. Many have traditionally argued that openness to international trade curbs anticompetitive behaviour and therefore makes antitrust policy unnecessary (Bhagwati, 1968; Blackhurst, 1991; Melitz & Ottaviano, 2008). The fundamental logic behind the argument is that low barriers to entry for international competitors can check the market power and abuses of locally dominant firms. Additionally, as Bartók and Miraudot argue (2008), export opportunities allow more firms to reach an efficient scale, further supporting strong competition.

As a policy option seeking competitive economic outcomes, free trade has the advantage over competition law that it does not require complex bureaucracies to enforce it. This issue gains further relevance considering the complexities of coordinating multiple international antitrust systems. Furthermore, antitrust policy risks being used for purposes

of protectionism and the promotion of national interests (Horn & Levinsohn, 2001; Stephan, 2005).

The idea of substitution between open trade and competition law also lies at the very origin of the latter in Canada and the US. In both countries, the introduction of antitrust regulation at the end of the 19th century was politically motivated by a desire to implement protectionist measures, and a corresponding need to counteract the anticompetitive effects of tariffs (Büthe, 2014).

Other scholars, however, argue that competition policy and trade policy are not redundant but rather complementary tools that reinforce each other towards the same end of constraining market abuses (Bartók & Miroudot, 2008; Bond, 2013; Bradford & Chilton, Trade Openness and Antitrust Law, 2018). While acknowledging that they can be substitutes, Bartók and Miroudot (2008), stress their mutually reinforcing nature and the synergies that exist between both.

Moreover, the key idea behind the argument for complementarity is that a larger market makes the benefits from collusion and anticompetitive behaviour greater. For instance, operating in multiple markets allows companies to extract larger rents (Bond, 2013). In addition, detecting and prosecuting cartels across different jurisdictions is also harder, which could make collusion more likely in a context of international trade (Bradford & Chilton, Trade Openness and Antitrust Law, 2018).

Competition law would therefore be a necessary complement to openness and globalization, essential for ensuring that the gains from free trade are not undermined by anticompetitive behaviour. The European Union is a major jurisdiction that has embraced this view, using antitrust policy to support the goal of integrating the single market and preventing anticompetitive conduct from erecting private barriers in place of the dismantled public ones (Fox, 1997; European Parliament, 2022).

This logic also seems to have been embraced by governments worldwide, since there is a strong empirical connection between openness to trade and the stringency of antitrust laws (Bradford & Chilton, Trade Openness and Antitrust Law, 2018). The United States, on the other hand, has historically advocated for a separation of trade and competition policies out of concern that the latter would lose its focus on consumer welfare (Bradford & Chilton, 2021). This view prevailed in the WTO, but many Preferential Trade Agreements (PTAs) around the world have come to include provisions on antitrust policy.

In other words, many governments around the world have come to require that their trading partners adopt competition law and have used trade agreements to export their antitrust regimes (Bradford & Chilton, 2021).

The authors show that the European Union has been especially successful in this regard, with 63% of PTAs with antitrust provisions (which in turn represent about 51% of all PTAs) having language distinctive of EU laws, as compared to 1% with U.S. language.

2.4. Harmonization or divergence?

With globalization and the spread of antitrust regimes over the world, an important issue that has emerged has been the extent to which possible or advisable to harmonise national competition regulations. The dislocation between global anticompetitive conduct and national oversight means that there is a risk of underenforcement (as global companies escape the power of national authorities) or overenforcement (as national authorities apply their respective competition laws to extra-territorial conduct and they come into contact or confrontation over the same enforcement action) (Malinauskaite, 2010).

Harmonising antitrust regulation into a single international system could therefore "cover global anti-competitive transactions unreachable by domestic competition authorities. It could eliminate contradictory decisions from different jurisdictions, and save time and costs for firms involved in international transactions, as well as providing legal certainty and transparency. It would eliminate the limits of the 'effect doctrine' and bilateral agreements" (Malinauskaite, 2010, p. 396).

The path to achieving this, however, is far from clear. A "hard law" approach which creates binding, precise and enforceable rules through international institutions would provide the greatest level of harmonization, but it presents significant problems, namely:

> "[G]lobal institutions are less accountable than their domestic counterparts, and they entail increased costs of participation. Put differently, there are questions of participation and legitimacy to international antitrust institutions. No international institution has strong democratic legitimacy. Instead, by their nature, supranational institutions suffer in this regard. International organizations are farther from voter preferences than domestic alternatives and the market. This increases the costs of participation in these organizations to those with significant financial resources" (Sokol, 2007, p. 119).

The European Union is a good example of hard-law harmonization of antitrust regimes. However, it has required the corresponding loss in sovereignty and convergence on values and conceptions that underpins the rest of the integration project.

These problems make the alternative of a "soft-law" approach of voluntary cooperation and bottom-up harmonization and domestic implementation attractive (Sokol, 2007). So far it has also been the most popular approach, embodied in international institutions such as the International Competition Network (ICN), the Organization for Economic Cooperation and Development (OECD), the World Trade Organization (WTO) or the United Nations Conference on Trade and Development (UNCTAD).

Moreover, there are many perspectives from which divergence would be preferable to harmonization, whether hard or soft. For example, former Federal Trade Commission (FTC) Chairman William Kovacic argues that "the history of competition policy has featured a continuing search for optimal substantive rules and implementation methods. This search has benefitted from continuous, decentralized experimentation with respect to analytical principles […], enforcement procedures […], investigation techniques […], and organizational innovation" (Kovacic, 2009).

Complete homogenization is to be avoided according to the author since it would block this process of experimentation and gradual improvement. Kovacic also points out that the effort to harmonise regulatory regimes assumes that the optimal approach and frameworks are already known. This is what is implicit in talking about convergence on "best practices". He prefers instead to speak of "better practices" to highlight the need for continuing evolution.

Other authors argue that competition law harmonisation would be ineffective in a context where countries still hold on to anticompetitive provisions in trade protectionism, attraction or exclusion of foreign investors, non-border regulations, industrial policies, and overenforcement of intellectual property (Rosenthal & Nicolaides, 1997).

Competition policy itself can be used for protectionist ends (Stephan, 2005; Horn & Levinsohn, 2001). Harmonising it is therefore fraught with difficulties. Relatedly, Stephan (2005) also points out that government failure in competition regulation is a relevant factor to consider alongside the market failures that are being addressed. As relates to harmonization, government failures may replicate themselves at the international level, where there they are in turn more difficult to unwind.

Finally, there is the concern that different countries' contexts necessitate different competition law frameworks. This is particularly relevant for developing countries, for whom harmonization may not adequately consider the developmental goals, public interest concerns, and economic realities of these regions. See, for example, Dani Rodrik's critiques of the "one-size-fits-all" approaches of international trade agreements and how they create losers in globalization (Rodrik, 2018).

Chapter 3: Analysis of the current competition policy and globalisation

3.1. The move away from consumer welfare

This section will show how recent years have seen a retreat of the minimalist, consumer-and-price oriented antitrust philosophy that has prevailed since the 1970s. Growing corporate concentration across the economy, and especially the dominance and size of technology companies such a Google, Facebook, Microsoft or Amazon are the main concerns (Crane, 2019; Piotrowski, 2022).

In the United States, President Joe Biden has appointed many neo-brandesians to positions of power such as Lina Khan as chairwoman of the FTC and Tim Wu as White House adviser on technology and competition.

The name "Neo-brandeisians" comes from Louis Brandeis, an early 20th century American Supreme Court judge who is the most influential figure associated with the opposition to bigness and the stringent antitrust philosophy of the New Deal period that lasted until the 1970s (Brandeis, 1914; Crane, 2019). The Neo-brandeisians are a group of scholars that have recently been calling for a rejection of Judge Bork's consumer welfare standard and a return to a much broader and stringent antitrust philosophy. For example, Lina Khan argued in 2017 that:

> [T]he undue focus on consumer welfare is misguided. It betrays legislative history, which reveals that Congress passed antitrust laws to promote a host of political economic ends—including our interests as workers, producers, entrepreneurs, and citizens. […] Antitrust law and competition policy should promote not welfare but competitive markets. By refocusing attention back on process and structure, this approach would be faithful to the legislative history of major antitrust laws. It would also promote actual competition—unlike the present framework, which is overseeing concentrations of power that risk precluding real competition. (Khan, 2017)

Stringency is rising in other jurisdictions too. As explained in the previous chapter, Europe came to embrace the focus on efficiency and consumer welfare advocated by the Chicago School, although it long punished practices such as vertical and conglomerate mergers or forms of unilateral conduct which were allowed in America (Bradford, Chilton, & Lancieri, 2019).

In recent years, it has distinguished itself by being the most ardent challenger of large technology companies (Piotrowski, 2022). In 2022 new regulations, the Digital Services Act and the Digital Markets Act, were introduced that were aimed at curbing the behaviour of digital companies and protecting consumers in areas such as content moderation, information asymmetries or abuses of power. The Digital Markets Acts, for example, designates as "gatekeepers" those "*digital platforms with a systemic role in the internal market that function as bottlenecks between businesses and consumers for important digital services"* and exercises greater regulatory control over them (European Comission, 2023).

In 2020 it proposed a "New Competition Tool" (NCT) as part of its Digital Finance Package. This expansion of competition powers would have allowed it to intervene in markets with "structural competition problems" that the previous framework was insufficient to tackle, such as monopolisation strategies by non-dominant companies with market power or parallel leveraging strategies by dominant companies into multiple adjacent markets (European Comission, 2020).

Although the NCT was finally dropped from legislation, it illustrates the push by the European Union to expand the scope of competition regulation in the face of "a few large platforms [that] have become gatekeepers for many digital and non-digital products and services" (European Comission, 2020).

Also illustrative are European Commissioner for Competition Margrethe Vestager's views on competition law. She has argued that "we need to push for a broader notion of consumer harm" (Piotrowski, 2022), and "can be credited for spurring a renewed interest for fairness in today's policy discourses underpinning competition law enforcement, in the EU and beyond" (Gerard, 2018).

China, the other major economic superpower along with the US and the EU, cracked down on big companies in 2021-2022 and expanded its 2008 competition law to increase sanctions and agencies' discretion (Piotrowski, 2022). Globally, Bradford and Chilton document the rising stringency of antitrust across a wide number of countries (see fig. 1) (Bradford & Chilton, Competition Law Around the World from 1889 to 2010: The Competition Law Index, 2018).

3.2. Illustrative cases in international M&A

Below are presented several cases and examples of enforcement actions that illustrate the clash between the globalised M&A activity of multinational corporations and the increasingly stringent competition regulations of independent jurisdictions across the world. These are not selected according to any specific criteria other than their usefulness as illustrative examples.

3.2.1. Illumina & Grail

In 2021 Illumina, a provider of gene-sequencing technology, acquired Grail, a developer of early cancer-detection tests for which Illumina's gene sequencing services are a crucial input. The Federal Trade Commission challenged the deal over worries that Illumina might withhold access or raise the prices of its products for Grail's competitors, thereby reducing innovation and the quality and affordability of the tests (Federal Trade Commission, 2021).

The following year, an administrative judge ruled in favour of Illumina (Illumina, 2022). However, the European Commission prohibited the acquisition, despite Grail having no business in the European Union. This has led Illumina to challenge the European Commission's jurisdiction to review the deal, as well as the divestiture order itself and an additional divestiture order from the FTC which overruled the judicial decision (Illumina, 2022; Illumina, 2023).

3.2.2. Nvidia & Arm

In September 2020, Nvidia announced its intention to acquire Arm Limited, a leading semiconductor and software design company based in the UK and owned by the Japanese firm Softbank. Arm is known for its designs of energy-efficient processors used in a wide range of devices, including smartphones, tablets, and Internet of Things (IoT) devices. The acquisition was set to be one of the largest in the semiconductor industry, with a reported value of $40 billion (Nvidia, 2020).

The deal faced regulatory scrutiny from the US, the EU and the UK. The main concerns were that it would give Nvidia too much power over the semiconductor industry since Arm licenses its designs and intellectual property to many of Nvidia's rivals.

Of particular importance to the discussion on the changing goals of antitrust and the decreasing primacy of the consumer welfare standard is the importance of national security concerns. Regulators have become more cautious about consolidation in the

high-tech chip industry as these chips are becoming essential infrastructure for various industries, including those with significant national security implications (Dowd, 2022).

These regulatory hurdles proved too high, and the acquisition was terminated in early 2022 (Nvidia, 2022).

3.2.3. Microsoft & Activision Blizzard

Microsoft, the global technology giant, announced in January 2022 its acquisition of Activision Blizzard, a popular video game publisher, for $68.7 billion (The Economist, 2023). The Xbox, one of the most dominant gaming consoles, is sold by Microsoft. One of regulators' worries was that competition might be harmed if Activision's catalogue of games was withheld from competitors such as Sony's PlayStation.

Another important concern came from the emerging industry of cloud gaming. This is a new business model whereby users pay a subscription and gain access to a bundle of games that are streamed across the internet. Regulators such as the UK's Competition and Markets Authority (CMA) and the US's Federal Trade Commission worried that Microsoft could come to dominate this nascent industry by withholding content from competitors (Federal Trade Commission, 2022; CMA, 2023).

Finally, though it placated European regulators, and the FTC faced important challenges in court, Britain's CMA announced that it would block the deal due to concerns over competition in cloud gaming services (CMA, 2023). Microsoft's options in case its appeal of the decision fails are to break off a smaller chunk of Activision or carve the UK out of the global deal, both things it has said it will not do. (The Economist, 2023).

3.2.4. Applied materials & Kokusai Electric

In 2019, Applied Materials, an American semiconductor equipment company, announced its intention to acquire Kokusai Electric, a Japanese firm that also manufactures equipment for semiconductor production, from American private-equity giant KKR.

The horizontal merger secured regulatory approval in America, Europe and Japan. However, it fell through when it failed to secure China's consent (Piotrowski, 2022) (Applied Materials, 2021).

3.2.5. Boeing & Embraer

American aircraft manufacturing titan Boeing announced in 2018 an agreement with Embraer, a Brazilian manufacturer, aimed at forming a strategic partnership in the

commercial aircraft market (Boeing, 2018). The partnership was structured as a joint venture, with Boeing acquiring an 80% stake in Embraer's commercial aircraft division, and Embraer retaining the remaining 20% ownership.

The deal sought to expand Boeing's product portfolio in the regional jet market and enhance its competitive position against rival Airbus. It secured approval everywhere (i.e., US, Brazil, China) but Europe (Piotrowski, 2022).

In 2020 Boeing terminated the deal because Embraer "did not satisfy the necessary conditions" (Boeing, 2020), with industry analysts pointing to the consequences of the COVID pandemic as the main reason for the retreat (Leeham News, 2020).

3.3. The state of global M&A activity

Despite these cases, the pressure to move away from the consumer welfare standard, and the resulting regulatory uncertainty, M&A activity remains strong. Figure 2 shows the number and value of M&A deals globally since 2013. As can be seen, 2021 and 2022 were record years in both metrics, with $5.5 and $4.5 trillion dollars transacted each year respectively (Clarke, et al., 2023).

Global M&A activity 2013-2023 (Pitchbook)

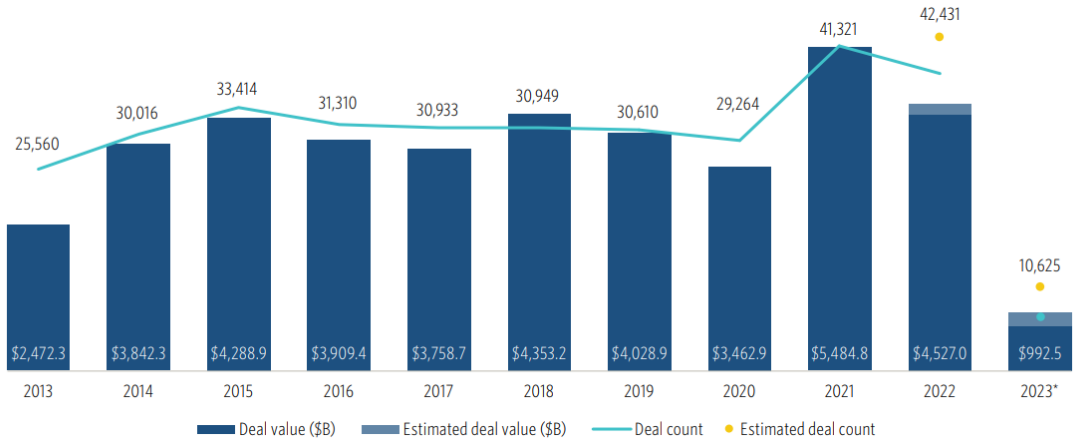

Figure 2 (Clarke, et al., 2023). Data as of March 31st 2023

These figures come from market intelligence company Pitchbook. Other organizations such as the Institute for Mergers, Acquisitions and Alliances (IMAA) or Boston Consulting Group (BCG) publish similar figures (IMAA, 2023) (Kengelbach, et al., 2022). Figure 3 shows IMAA's estimates for M&A activity going back to 1985, which show how corporate transactions in the latest era of globalisation and neoliberalism have experienced strong growth.

They also illustrate the importance of financial markets. The impacts of both the dot-com crash and the global financial crisis of 2008 are clearly visible, especially in the aggregate value of the deals.

Global M&A activity 1985-2023 (IMAA)

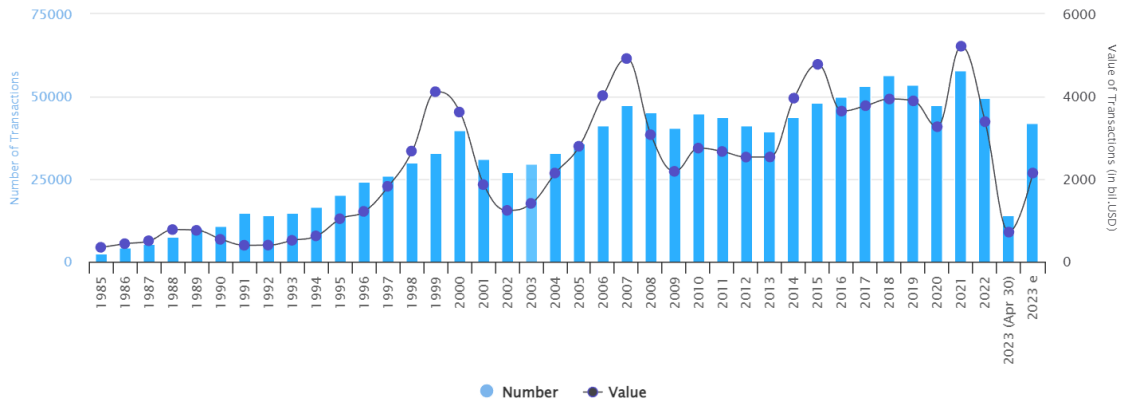

Figure 3 (IMAA, 2023)

Today, M&A activity is also experiencing headwinds associated with the financial markets and the macroeconomic situation. Inflation, rising interest rates, and the risk of recession have put a dent in dealmaking and driven it down from its 2021 peak, although it remains at pre-pandemic levels (Clarke, et al., 2023; Kengelbach, et al., 2022).

Cross-border transactions have also been deeply affected by the macroeconomic situation and international financial markets, especially through exchange rates. The dollar climbed to a 20 year high in 2022, at which point North American acquirers accounted for 1 in 10 European M&A deals and 21.3% of their value (Clarke, et al., 2023). Since then, the dollar has retreated by more than 10% and the net flow of M&A capital to Europe has dissipated, as Pitchbook's report shows. Figures 4 and 5 showcase the size and resiliency of international M&A in North America and Europe. In 2022, international acquirers accounted for 13.7% of deal value in North America and 23,5% in Europe (Clarke, et al., 2023).

North American M&A deal activity with non-North American acquirer

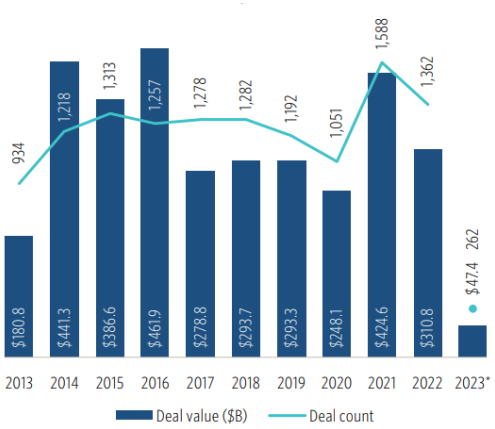

Figure 4 (Clarke, et al., 2023). As of March 31st, 2023

European M&A deal activity with non-European acquirer

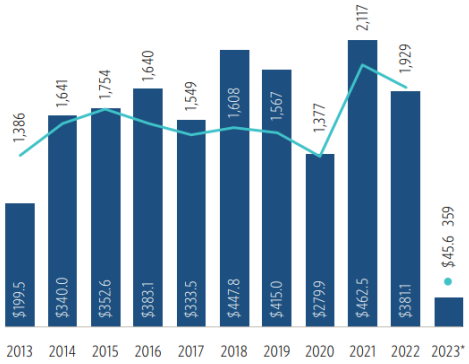

Figure 5 (Clarke, et al., 2023). As of March 31st, 2023.

3.4. Analysis of global M&A, competition policy and globalisation

What insights can we glean on the globalisation process considering this discussion on international M&A and the recent changes and trends in antitrust regulation? Following are some considerations that arise from putting together the discussions on globalisation and neoliberalism of chapter 1, those on antitrust and its international application of chapter 2, and the recent events and trends in global M&A.

3.4.1. Importance and resilience of global financial markets and cross-border capital flows

International mergers and acquisitions are a form of investment and capital flows between countries. A close look at them reveals just how deeply interconnected economies are through the global financial system. Arm, which was set to be acquired by an American

company, was based in the UK but owned by Japanese firm Softbank. Kokusai Electric, which was almost sold to American company Applied Materials, was owned by American private equity giant KKR. For public companies, international investors will almost assuredly be part of their capital base. As IMAA's data shows, global M&A activity has risen significantly on the back of globalisation since 1985.

Moreover, the data shows how developments in global financial markets have been a much greater force in M&A than antitrust in the past. Movements in interest rates, exchange rates, or financial crises such as the dot-com crash or the Great Recession have been key determinants of the size and direction of these capital flows. This suggests that the impact of the broader antitrust aims and enforcement actions may be marginal, at least on the aggregate size of the capital flows that interconnect the world economy.

However, this does not mean that recent developments in competition enforcement are unimportant. Though they have not put a great dent in the total volume of cross-border capital flows, at least until now, the counterfactual of what would have happened or will happen in the future if the consensus around consumer welfare remained strong is unknown and would need to be more deeply investigated than is possible here.

Furthermore, they may still have important consequences for specific global industries, for international relations, and for globalisation in general, as will be laid out in the rest of this chapter.

3.4.2. One-country rule vs. havens

Let us consider the criticisms on globalisation and neoliberalism recounted in chapter 1, especially the concern about how "races to the bottom" have allowed Multi-National Corporations to leverage their global reach and economic power to put one state against the other and shift their profits and activities around to benefit from lower taxes and more lenient regulations in areas such as labour or the environment.

One key lesson from the cases and enforcement actions discussed above is that competition policy presents an area where the incentives are the opposite of those in fiscal policy or business regulation. In these areas, states that offer the most attractive regimes can have a major impact on the global economy, for example by attracting the most capital and investment, or by having corporations shift their production or profits.

In global mergers and acquisitions, where MNCs are subject simultaneously to the rulings of a very high number of jurisdictions, the most stringent of them can dictate the outcome of transactions and determine the structure of global industries. Take, for example, Britain's veto of the acquisition of Activision Blizzard, Europe's vetoes of the acquisitions of Grail and Embraer, or China's thwarting of the acquisition of Kokusai Electric.

As the number of regulators has skyrocketed, and as they diverge away from the consensus on economic efficiency, the potential restrictions that MNCs face also rise. Countries may diverge on many different points of policy: whether to exercise antitrust action in new and innovative markets such as cloud gaming or cancer tests, the national security implications of certain industries, or what "fairness" means as a competition criterion, for example.

In any one of these, a single jurisdiction's prohibitions can have major consequences across the global economy.

3.4.3. The power of large economies and the prospects for harmonization

This power to determine the outcome of global deals unilaterally, unlike the option to become a tax haven, is not equally open to every state. Only those with enough economic clout can afford to leverage it to punish Multi-National Corporations without driving them away entirely. When Britain shot down the Activision Deal, Microsoft discarded the option of cutting Britain out of the deal, but it said it would reassess British plans. WhatsApp and others have threatened to leave the country over applying its encryption rules worldwide (The Economist, 2023).

Presumably, smaller or poorer countries would find it much riskier to pursue aggressive competition enforcement philosophies that diverged significantly from the global consensus. Nevertheless, those that can afford it can leverage their economic weight even when no business is being carried out in their territories, as shown by the EU's Grail divestment order.

The outcome for any global transaction will therefore be determined by the most stringent competition regime among those in the jurisdictions that the MNC in question cannot afford to ignore. The largest of them such as the EU, America or China therefore have outsized power to influence the structure of global industries. This is in addition to their leveraging their economic clout to nudge countries to adopt antitrust regimes in their

image through trade agreements, as the EU has been prolific in doing (Bradford & Chilton, 2021).

These circumstances provide strong incentives towards harmonization, while leaving room for divergence. Since the outcome of global transactions is determined by the most stringent regulator (among those economically relevant enough), countries favouring a laxer approach would have to resign themselves to accepting tougher competition laws or convince others to adopt their system. They could also come to house companies that benefit from the local rules but decide not to internationalise for fear of regulatory pushbacks.

3.4.4. Opportunities to be used by states for national ends

Another fundamental consideration is the potential for competition policy to be used in the pursuit of national interests that do not coincide with the interests of other countries or of global consumers.

This risk has been discussed in chapter 2. For example, Paul B. Stephan (2005, p. 194): "[competition policy] has the potential to inflict significant costs on many participants in international trade. In particular, it tempts states both to impose nominally neutral policies that favor local producers and consumers at the expense of global welfare, and to administer their policies in a discriminatory fashion to similar ends. Uncertainty about the willingness of states to pursue this strategy further burdens international transactions".

As an example, take the EU's veto power over Boeing's failed joint venture with Embraer. One of the rationales for the deal was improving Boeing's competitive position against Airbus, its main rival and a champion of European industry. This does not imply that in this specific case Europe withheld its approval out of a conscious strategy of industrial policy. Indeed, COVID was the main reason behind the deal's termination. Nevertheless, it provides a good example of how competition policy is a potential tool for protectionism, industrial policy and mercantilism.

3.4.5. Implications for the role of the state and globalisation

The picture that emerges from these considerations is more nuanced and complex than the usual story of a radical retreat of the state and unfettered Multinational Corporations. At least in matters of global M&A, international businesses face a plethora of national authorities with potential power to unilaterally regulate the global economy (a capacity weighed by their economic power, to be sure).

Compare this with Dani Rodrik's concerns summarised in chapter one about weakly embedded markets, the lack of a global antitrust authority, the "one-size-fits-all solutions" to globalise and the loss of sovereignty. It is certainly true that there is no *unified* global regulator, but necessity of obtaining near unanimous consent from such a multitude of independent jurisdictions also ensures that some measure of stringent regulation is likely to be applied.

The possibility for different jurisdictions to apply their own frameworks is also a check on the "one-size-fits-all" approach. Sometimes it's the EU's criteria that are imposed, while in other occasions it may be America's, Britain's, China's or a different country's rulings that turn out to be the critical ones for a given deal. Moreover, as globalisation progresses and more countries become wealthier and integrated with global businesses, the number of regulators with power to influence global deals will only increase.

Even smaller countries can apply harsher regulations if they are prepared to risk being carved out of deals. Nevertheless, the impulse towards harmonization and the export of regulatory regimes through trade agreements does increase uniformity, and so there are still valid concerns in this matter.

Despite not being a retreat of state power, the present regulatory system of global business does mean a loss of sovereignty. After the UK vetoed the Activision deal, a gamer commented on an online forum "*How does a UK court block one American company from buying another American company? […] We had a war about this, and being independent, can do as we damn well please*" (The Economist, 2023). The comment illustrates well the reality that global businesses surpass the sovereignty of their home states and are subject to the scrutiny of other powers the world over.

This work has not discussed in depth whether the move away from the consumer welfare standard is overall a positive or a negative development. It has merely sought to convey the main points of the debate and what the broadening of antitrust regimes and their proliferation around the world means for the role of state, globalisation, and international business.

Certainly, sceptics of the recent model of globalisation such as Stiglitz and Rodrik who are concerned about a universal application of neoliberal principles will find the shift in consensus commendable. They will also celebrate the current regulatory landscape, since it is increasingly likely that some regulators will adopt stricter philosophies and curb

MNCs. On the other hand, neoliberals will lament the economic gains lost to this or that national regulator's decision, although much more control would be needed to curb the global capital flows and investments that constitute international M&A.

One thing that seems likely is that, as economic efficiency loses its central status and broader aims are recognised for competition policy, it will become easier to use it to promote industrial policy and protectionism, under cover of loftier aims such as protecting workers, innovation or fairness. This is especially so in a context of increased international competition and multipolarity after the United States' post-Cold War era of undisputed primacy.

Again, some globalisation sceptics will welcome this. Critics like Ha-joon Chan who argue that protectionism and industrial policy were integral to developed countries' success and who lament that the same tools are being denied to today's developing countries will cheer. They would likely encourage such countries to take advantage of the opportunity, especially given that other traditional tools such as tariffs are not available.

Nevertheless, advocates for free trade will reproach the trend. Furthermore, many will fear the increased chances of international conflict and tension that protectionism brings with it.

Conclusions

Competition policy presents an area where the incentives and dynamics differ from the usual concerns around globalisation. Instead of being able to choose among competing states to optimise their fiscal burden or productive efficiency, when conducting corporate transactions Multinational Corporations face an array of independent regulators, any one of which can veto or at least impact a deal. In other words, it is the most stringent (weighed by their economic clout) rather than the least stringent that have the capacity to determine global economic outcomes.

The increase in the number and stringency of these regulators, their broadening objectives that often go beyond economic efficiency, and the growing number of economically important jurisdictions all mean that constraints on global businesses may not be as limited as implied in many of globalisation's criticisms. Whether this is a positive or a negative environment is left for the reader to decide.

Despite these regulatory difficulties, global M&A remains strong, pointing to the importance and resilience of the global capital flows that underpin globalisation. Changes in international financial markets, such as recessions and movements in interest rates or exchange rates, continue to be the key drivers for international investments.

Perhaps the most concerning possibility is the potential for states to use antitrust policy for protectionist purposes that harm global welfare, under the cover of the broader and more abstract objectives now being pursued. There is an important balance to be struck between harmonization of regimes and their divergence, between reducing transaction costs, uncertainty and the potential for protectionism on one hand, and protecting states' sovereignty, regulatory experimentation, and the needs of developing countries on the other. These issues could come to play an important role in international relations if competition policy comes to the centre of debates around the global economy.

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