

# **Transplant of Competition Laws: Who Benefits?**

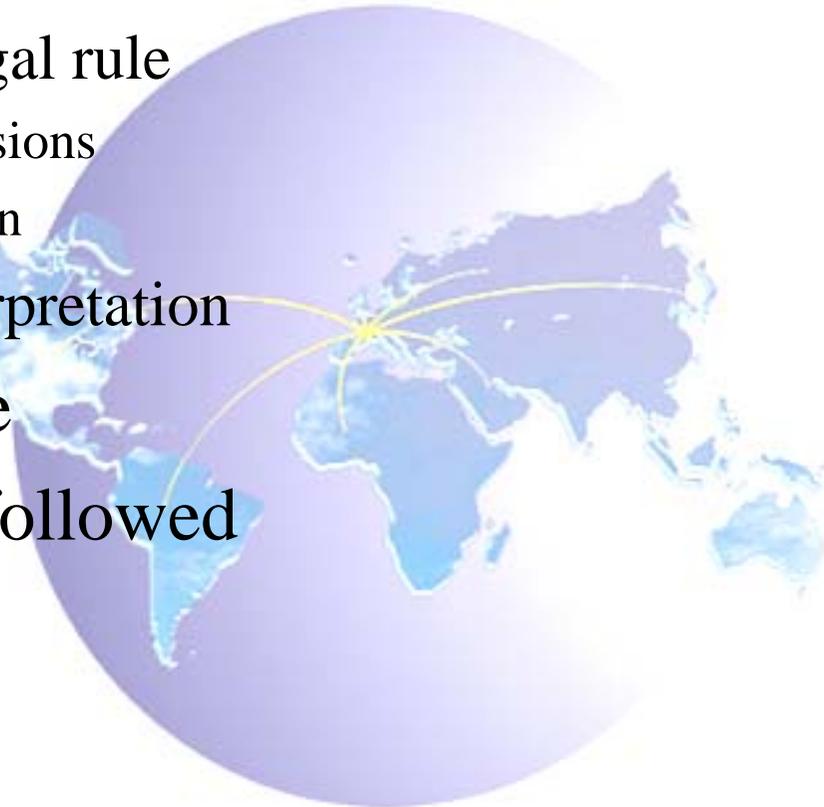
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# Introduction

- Proliferation of antitrust laws
- Transplant phenomenon
  - Transplant of a legal rule
    - Substantive provisions
    - Institutional design
  - Transplant of interpretation
- Partial or complete
- Not always route followed



# Themes explored

- Why transplant?
  - Conditions for a successful transplant  
*Gal, “The Cut and Paste of Article 82 EU” Eur J. of law Reform (2007)*
- How does transplant affect the followed?
  - possible boomerang effects  
*Gal and Padilla, “The Follower Effect” Antitrust L. J. (2010)*



# Why Follow?

- Adoption of "ready made" and pre-tested rules saves costs
- Increases certainty: Full saddlebag
  - Increase with small size  
[Gal, Davies]
- Learning externalities
- Push through new concepts
- Combat pressures
- Reduces compliance costs
- Joint solutions



# Negative Effects on Follower

- Culturalists vs. transferists
- Does not deal with local needs
- Ideology or legal framework misfit
- High error costs:
  - Complicated rules
    - plus-
  - Limited institutional capability
- Legal imperialism



# Some conclusions

- Watson: quality of the idea
- Goals fit well (integration)
- Substantive provisions fit conditions (HHI)
- Institutional structure considerations
- Local sponsor
- Society's "felt needs"
  
- Transplant with variations

## WHY CARE ABOUT FOREIGN LAWS?

- Access effect
  - Ability to enter or expand
  - Welfare of exporters
- Conduct effect
  - Effect on consumers and firms of followed
  - Condition: economic linkages
  - Merger review
  - Conduct quality effect (Microsoft, Google)
    - No ability to differentiate
    - Veto power

# Recent recognition

Christine Varney (2009):

“unless we...can sit at the table and jointly continue to pursue the evolution of ...section 2, I think we are going to cede this territory to the Europeans entirely and we are not [going to] have a whole lot to say about what abusive dominance looks like for a global firm.”



Limits of national governance

# Effect of Follower Phenomenon

- Positive: Interests aligned
  - Reduced learning and compliance costs
  - Effective regulatory tool → open markets
  - Convergence easier
- Negative
  - Prohibits anti-competitive conduct by exporters (Guzman)
  - Abandonment of competitive conduct due to high cumulative regulatory costs
  - High error rate due to combination complex rules+ institutional limitations

# Solutions?

- Aiding Foreign Antitrust Enforcement
- Creating model laws
- Changing content of one's laws
  - Balance:
    - Effect from application in domestic markets
    - Effect from externalities



Thank you!

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