
*Competition Policy for
Emerging Economies:
When and How?*



COMPETITION LAW IN DEVELOPING COUNTRIES: THE ROLE OF MULTINATIONAL ENTERPRISES (MNEs)

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The paper aims at providing a comprehensive view of the **role and influence Multinational Enterprises (MNEs)** may have in the **adoption of competition laws in many developing countries.**

For that purpose, it puts into perspective **MNEs' attitude towards hard-core anticompetitive conducts and rules banning them** (and, eventually, the absence of effective competition rules in some jurisdictions).

- 1. MNEs, foreign direct investment and developing countries.**
- 2. MNEs behavior when developing countries do not have effective competition law regimes: some existing evidence.**
- 3. MNEs incentives to follow strict rules against committing or taking part in hard-core anticompetitive practices.**
 - 3.1. Legal reasons.
 - 3.2. Organizational reasons.
 - 3.3. Reputational reasons.
- 4. MNEs influence in spreading competition culture, competition policy and promoting the adoption of legal rules against competition in developing countries.**

MNEs account for 1/3 of worldwide trade. The economic **performance** of the largest MNEs is better than that of several individual countries.

Comparing MNEs sales and country GDPs, among the 100 largest economic organizations worldwide, 51 would be MNEs and 49 would be countries.

MNEs are one of the channels for **foreign investment** in developing countries (either through affiliates or joint-ventures with local firms).

Global character of MNEs would favor following similar legal rules in different jurisdictions where they operate (**global legal strategy**), but that's not generally the case, domestic rules and institutions are prevalent in most legal areas.

That is also the case for **competition/antitrust legal rules (domestic rules)**, however there is consensus regarding some hard core anticompetitive violations (i.e., price fixing, market sharing agreements and bid-rigging are forbidden no matter the national legal rules you look at).....

Apparently, this would make things easier for MNEs, that know that some practices are forbidden no matter where they operate.....

The problem is that they are not banned everywhere, as some developing countries lack effective competition legal rules....**What do MNEs do in those countries?**

MNEs and Competition law when countries do not have effective competition law regimes: existing evidence (and 2).

Existing evidence points at the possibility of MNEs **arbitraging on the absence of effective competition legal rules**, therefore, they would behave in those jurisdictions like they cannot do in other countries (LEVENSTEIN, SUSLOW, CLARKE, EVENETT, CONNOR, JENNY, KOVACIC, GAL, MEHTA):

- (i) **Regional cartels** *tailored* to country/ies where no legal competition rules exist (purest and more extreme form of arbitrage).
- (ii) **Stronger impact of Global cartels:** *global* conducts had more severe impact in countries where no legal competition rules exist (may go together or overlap with iii).
- (iii) **Global cartels unpunished there:** *global* conducts were not prosecuted in countries where no legal competition rules exist.

How? Expressly through *codes of conduct/ethics codes (self-regulation)* or implicitly by committing to follow the rules from the strictest antitrust jurisdictions where they operate.

Why? Strong incentives for doing so.

3.1. Legal reasons. Minimizing liability exposure in other countries that may assert extraterritorial jurisdiction.

3.2. Organizational reasons. Avoiding the anticompetitive vice to spread all over the MNEs structure (industry/company position/type of practices).

3.3. Reputational reasons. Avoid damage in global reputation because antitrust abuses where committed in developing countries.

An example of an standard in some **MNE's guidelines/code of business ethics**, against anticompetitive forms of wealth extraction, no matter the governing competition legal rules...(if any)



Competing Fairly

An Antitrust Primer for Shell staff



"Shell companies support free enterprise. They seek to compete fairly and ethically and within the framework of applicable competition laws; they will not prevent others from competing freely with them" (SGBP 8).

MNEs influence in spreading competition culture and promoting the adoption of legal rules against competition.

MNEs as a relevant non-state actor, which are present and act in the developing countries' markets, whose actions might provoke a **positive spillover**, helping in the **transfer of the rules from other jurisdictions** (knowledge/experience diffusion).

MNEs presence and actions as an inspiration and stimulus for the future adoption of competition legal rules. *Smooth learning....*

Intensity of the spillover depends on **many circumstances**, but the fact that many **MNEs abhor taking part in hard anticompetitive conducts**, will help in the **initial setting and development future of a competition policy** (like the specific human capital present in the professionals there).