

Transplant of Competition Laws: Who Benefits?

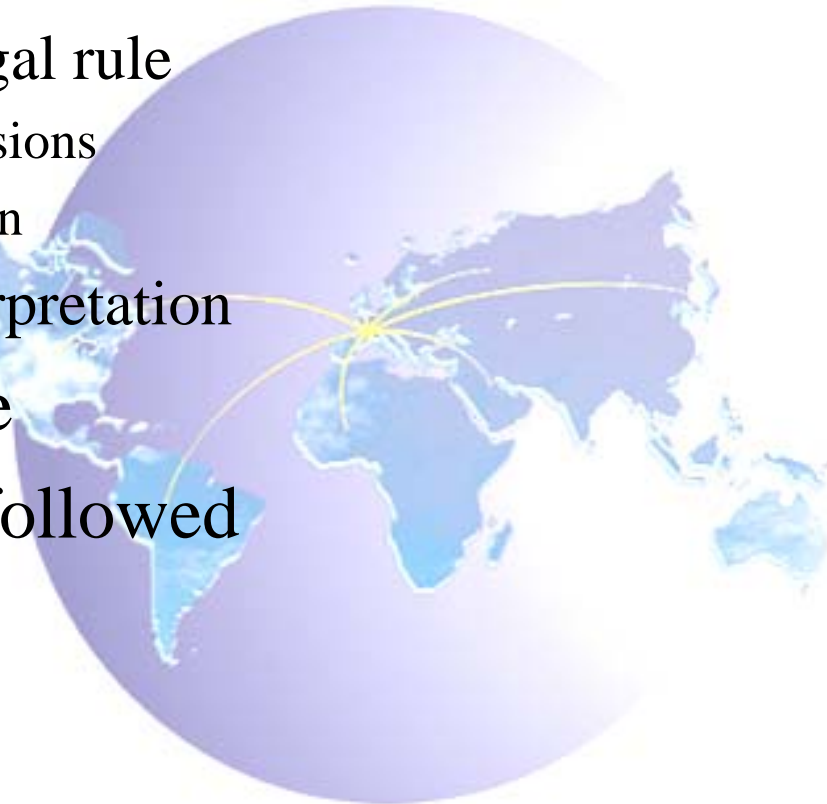
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Introduction

- 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!

<http://weblaw.haifa.ac.il/en/Faculty/Gal/Pages/Publications.aspx>

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