THE TRANSFORMATION OF GLOBAL GOVERNANCE PROJECT

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EXTRATERRITORIALITY AND COOPERATION IN COMPETITION POLICY

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In a context where a few global firms dominate key sectors worldwide, the proper functioning of product markets rests on enforcing both a non-distortive trading regime and pro-competitive competition laws. Whereas trade is governed by multilateral rules, however, there is no global competition law nor a global competition authority. Competition policy remains in the sole remit of national authorities operating under national law. National decisions, however, have strong extraterritorial effects. This raises significant international coordination issues.

1. A case of voluntary cooperation amongst national authorities

Competition provides an illuminating case of global governance through voluntary cooperation of independent national authorities. The key ingredients of this model are the following:

- Policy objectives are largely similar across countries;
- Policy implementation is almost everywhere delegated to independent national authorities whose mandates are therefore largely similar;
- National authorities cooperate informally in assessing potential cross-border effects of policies;
- They recognise the right of their partners to take decisions which apply to firms in their own jurisdiction, provided they are respond to demonstrably harmful effects of firms' behaviour;
- Within the framework of their mandates, national authorities refrain from taking decisions that would be disproportionately harmful to partner countries.

While this model has some resemblance to the one at work amongst central banks, there is a significant difference: central bank decisions do not target specific economic actors in partner countries, whereas competition authorities do. In merger control cases, they may impose remedies such as the sale of assets located outside the border of their jurisdiction.

2. A model whose permanence cannot be taken for granted

This model has been in operation successfully for more than two decades. About half of the competition cases dealt with by authorities in large countries explicitly involve cross-border dimensions. The global competition network includes about 130 countries. The resilience of this model however rests on ingredients whose permanence cannot be taken for granted:

- The convergence of competition mandates was largely due to the similarity of those of the two main players: US and EU. Until recently, China's competition policy was underdeveloped and competition laws were largely copied on those of the two incumbent powers. As China develops its own competition policy philosophy and as other newcomers play a greater role, the commonality that has characterised competition regimes worldwide may not last;
- Even if legal texts remain similar, the environment of competition authorities may change. Pressures from policy departments in charge of industrial or trade policy may undermine the peaceful coexistence between competition policy authorities;
- Ad-hoc cooperation between competition policy authorities does not deliver a first-best result. Depending on the size of the corresponding market and the degree of concentration of the firms involved, decisions by national authorities may suffer from under-enforcement (for small countries) or over-enforcement (for large ones). Equity in the distribution of costs and benefits of competition rulings can therefore not be taken for granted. Such asymmetry will grow as digital business develops and gives rise to heightened competition concerns.