

FACT SHEET

August 26, 2015



Comparative Antitrust

Comparative Antitrust – Europe, Latin America, Asia. In the United States, “antitrust law” refers to the body of State and Federal laws that prohibits unlawful agreements and practices by firms with market power that harm competition. Europe, Asia and Latin America call the governance of market competition “competition law”. These laws typically seek to preserve robust market competition by enabling authorities to address anti-competitive conduct by monopolists; to review certain mergers and acquisitions between firms; and to correct unlawful pricing and contracting practices. Antitrust law almost always outlaws cartels (e.g., market-controlling alliances).

Other than Europe-wide competition law established by the European Union (EU), there are no international laws regulating antitrust. Some nations have significantly divergent antitrust laws, and even those with similar laws may enforce them somewhat differently. These differences can make doing business internationally quite complex. There is a spirited debate over whether and how much to harmonize the laws of different nations, and which nation’s approach is best for consumers, innovation, economic growth, and competition. Antitrust authorities of different countries sometimes meet to discuss these issues.

Overview

These issues arise in discussions of comparative antitrust:

- How different countries balance different and sometimes conflicting economic goals when making and enforcing competition regulations – e.g., boosting the national and/or local economy, limiting the power of large firms, protecting consumers, and fostering local enterprise.
- How economic theory and evidence should be brought to bear on antitrust law and policy.
- How similar are the competition laws of Europe and the United States.
- What effect new antitrust laws passed in India, China, Brazil, and developing nations will have on trade partners.
- How much intellectual property protection should be given in competition disputes involving patents and copyrighted works, in cases where enforcing antitrust law creates tension with the exercise of intellectual property rights.
- Whether private firms, as opposed to the government, should be permitted to file antitrust lawsuits against rivals.
- How broadly jurisdictions should choose to apply formalistic *per se* tests to prohibit certain conduct, as opposed to a “rule of reason” analysis looking closely at evidence in each case to determine the competitive effects of the conduct.

Relevant Academics

[Jay Pil Choi](#)

Michigan State University
choijay@msu.edu

[Andy Gavil](#)

Howard University School of Law
agavil@law.howard.edu

[Richard Gilbert](#)

University of California, Berkeley
gilbert@econ.berkeley.edu

[Keith Hylton](#)

Boston University
knhylton@bu.edu

[Michael Whinston](#)

Massachusetts Institute of
 Technology
whinston@mit.edu

[Guofu Tan](#)

University of Southern California
guofutan@usc.edu

[Nicholas Economides](#)

Stern School of Business of New
 York University
economides@stern.nyu.edu

[Joshua Wright](#)

George Mason University School of
 Law
jwrightg@gmu.edu

Media Contact

For media inquiries on a range of TAP topics, or for assistance facilitating interviews between reporters and academics, contact TAP@techpolicy.com.

Comparative Antitrust Sources

These sources are a good place to start in understanding comparative antitrust issues. [Richard Gilbert](#) compares competition rules in the United States and Europe relating to the production of technology in “[Converging Doctrines? U.S. and EU Antitrust Policy for the Licensing of Intellectual Property.](#)” [Joshua Wright](#) looks at competition issues with big retailers such as Walmart in “[Sui Generis? An Antitrust Analysis of Buyer Power in the United States and European Union.](#)” [Keith Hylton](#) looks at cases involving leading firms like Microsoft in the United States and Europe in “[Section 2 and Article 82: A Comparison of American and European Approaches to Monopolization Law](#)” – arguing that consumers are better off when courts give firms the benefit of the doubt. [Nicholas Economides](#) and coauthor Ioannis Lianos take another view in “[The Elusive Antitrust Standard on Bundling in Europe and in the United States at the Aftermath of the Microsoft Cases.](#)” Scholar Daniel A. Crane looks at competition policy enforcement problems in Latin America in “[Private Enforcement against International Cartels in Latin America: A U.S. Perspective.](#)” [Jay Pil Choi](#) and his coauthor Heiko Gerlach study international antitrust enforcement when multinational firms operate in several markets with antitrust authorities in each market, in their paper “[International Antitrust Enforcement and Multi-Market Contact.](#)”

Please note that all links on this fact sheet are accessible from the online version at www.techpolicy.com/ComparativeAntitrust.aspx.

The TAP website (www.techpolicy.com/) is facilitated by Microsoft. Microsoft respects academic freedom, and is working to enable the dialogue on the most critical technology policy issues being debated.