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Global Integration of the Acquisition Market: Impact of Antitrust and Merger Laws on Institutional Conditions for Economic Globalization

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ABSTRACT

The fundamental tenet of institutional theory is that markets cannot function in the absence of social institutions including laws, networks, culture, and norms that regulate economic transactions. Intercountry spaces are hampered by the absence of institutional frameworks that regulate commercial transactions because these institutions are primarily formed and function within national borders. So, from an institutionalist standpoint, what may account for the recent three decades' worldwide integration of the M&A markets? I contend that the spread of antitrust law and merger control, two government regulations that directly manage transactions, is what allowed cross-border mergers and acquisitions to surge. Arguments for deregulation, which contend that market integrations can occur through the removal of existing rules rather than the enactment of new ones, stand in stark contrast to this one. In fact, adopter nations see an increase in the number of incoming cross-border mergers and acquisitions when antitrust laws and merger controls are adopted, according to my empirical studies. Antitrust laws encourage overseas acquisitions by sending a message to adopting nations that they adhere to international standards for market-oriented reforms. By providing clarity to otherwise ambiguous regulations for purchasing companies in adopting nations, merger control makes overseas acquisitions easier.

***Keywords**: GATT - General Agreement on Tariffs and Trade ; WTO - The World Trade Organization ; IMF - The International Monetary Fund.*

I. INTRODUCTION

A fundamental principle of economic sociology is that the market is entrenched in a variety of institutions, including networks, cultural norms, and governmental regulations, rather than existing in a vacuum. These social structures are not limited to isolated nation-states in the

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modern globalized era; rather, they are spread among nations by global culture. Because social institutions can transcend national borders, nations' institutional configurations are isomorphic. Sociologists have mostly examined the institutional frameworks that exist between nations in order to understand international economic interactions. Intercountry space is described as an "institutional abyss," devoid of the institutional frameworks necessary to facilitate commercial transactions, since the majority of conventions, networks, and regulations have been established inside the boundaries of specific nation-states. Researchers have discovered that in this intermediate zone, bilateral agreements and international bodies are crucial for identifying transaction partners, upholding agreements, clearing up ambiguity, and bridging cultural divides.

II. The wave of cross-border acquisitions

Since the early 1990s, there has been an increase in CBAs. The number of transactions, the number of deals, and the number of participating countries all increased dramatically between 1990 and 2000. This era is referred to by some academics as the first cross-border merger wave. With a value of US$ 1,219 billion, the transaction volume achieved its first peak in 2000, up 620% from US$ 168 billion in 1990. It saw a decline in the middle of the 2000s before rising to a second peak of US$ 997 billion in 2007. Compared to past years, cross-border acquisitions accounted for approximately 20% of all deals globally; by 2011, this proportion had increased to 35%. The CBA percentage of overall M&A activities1 exhibits a similar wave pattern and a discernible upward trend.

(A) Deregulation

According to neoclassical economic theory, deregulation leads to market integration. One widely acknowledged principle of neoclassical economics is that, in general, government regulation fails to provide an effective allocation of resources; in contrast, the market does. Government regulation creates possibilities for public officials or other powerful interest groups to engage in rent-seeking behaviour and disrupts the workings of the market system. This mistrust of government regulations extends to international capital flows and trade as well. Neoclassical economics argues that in order for countries to take advantage of their comparative advantages, exchange barriers and government interventions should be removed, creating integrated markets that are superior to segregated ones. This argument for deregulation also applies to CBAs. According to Evenett, a merger-review process dramatically lowers foreign takeovers in the host nation. He discovers that the volumes of incoming CBA are substantially smaller in nations that have merger control. However, his conclusions are based on crosssectional research that only looks at data from 1999; as a result, it is limited in its ability to establish a strong causal relationship because it is unable to track changes in a nation's CBA volume before and after merger control is adopted. The Evenett study is the first to look empirically at how merger restrictions affect CBAs, despite the widespread assertion in academic papers and business media that merger regulations will eliminate CBAs. Norbäck and Persson support investment liberalisation and contend that a restrictive cross-border merger policy will be detrimental. Similar arguments are made by Berger and Humphrey regarding the advantages of looser antitrust laws for bank mergers. This view of merger regulations is prevalent in the financial community and is evident in the language used by experts in the industry. A Washington-based antitrust lawyer once said, "It's a nightmare just knowing every place in the world where you've got to file...." This sums up the opinion opposing comprehensive antitrust laws. Antitrust laws exist in some of these nations, but the citizens are hardly aware of their meaning.

(B) Institutionalization and Positive Integration

The viewpoint of the economists described above is what Scharpf refers to as a negative integration perspective, according to which the removal of obstacles between markets will lead to their integration. Profitable transactions have no national boundaries, and market actors will easily interact with foreign companies as a result of market integration if legislative restrictions that unnecessarily restrict money flow or international trade are lifted. Conversely, a positive integration approach maintains that integrated markets require more than just the removal of barriers. Deliberate efforts by governmental bodies are required to establish common or similar guiding rules in each local market so that actors from two different markets face clear and familiar rules with fewer discrepancies in arranging transactions[5]. Sweet and Fligstein[6] point to EU market integration as a case of positive integration. They contend that the process of minimising differences among member states and establishing uniform norms was essential for the development of an integrated EU market and discover a positive correlation between the number of laws issued by the legislative body of the EU and increases in trade. They come to the conclusion that interest groups, EU legislative bodies, and national governments in Europe worked together to create uniform regulations, which ultimately led to the creation of the EU market.

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[5] Scharpf, Fritz. 1999. *Governing in Europe. Effective and Democratic?* Oxford: Oxford UnivPress.

[6] Stone Sweet, Alec and Neil Fligstein. 2002. "Constructing Markets and Polities: An Institutionalist Account of European Integration." *American Journal of Sociology* 107(5):1206–43.

III. The diffusion of antitrust laws and merger control

Global antitrust and merger law adoption surged in the 1990s and 2000s during the CBA growth period. Antitrust laws forbid actions seen to impair or restrict competition in an effort to preserve market competition, a fundamental tenet of capitalism. The activities that these laws ban are generally standardized across countries: price-fixing, market allocation, abuse of dominant market power, price discrimination, setting market entry barriers, application of dissimilar conditions to equivalent transactions, and concerted practices, whether horizontal, vertical, or conglomerates[7]. The Sherman Act, the first antitrust law in history, was passed by the US in 1890. Other capitalist nations did not outright forbid cartels during this period and in certain instances actively supported them, leading up to World War II. After World War II, the United States urged industrialized countries to enact antitrust laws, and in particular forced Japan and German to adopt them[8]. Developing and least developed nations were slow to enact merger control and antitrust laws, starting in the late 1980s. The developed world's laws served as a model for those adopted later. The antitrust laws of Ukraine, for instance, were adopted in 1992 and share many of the same features as those of the United States. These include prohibitions on price-fixing, market allocation, price distortion, establishment of barriers to market entry, price discrimination, coordinated practices among various business entities, and limitation or control of production, markets, or investments.

In the 1980s, market competition solidified its position as a global economic norm. Antitrust laws became a prevalent agenda in intergovernmental agreements and organizations such as the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO)[9]. In an effort to promote competition, the World Bank and the International Monetary Fund (IMF) started advising their borrowers to enact antitrust laws. The regulations were made mandatory for entry into the EU, which encouraged the adoption of the laws by other former communist nations. A subset of antitrust regulations called merger control is designed to weed out M&As that could have an adverse effect on competition. A government agency reviews an acquisition request under standard merger control laws, a process that can take two to six months. After reviewing the proposal, the agency decides whether to approve it or reject it depending on how it feels the arrangement will affect competition. In the majority of nations, this agency's

[7] Kennedy, Kevin. 2001. "Foreign Direct Investment and Competition Policy at the World Trade Organization." *The George Washington International Law Review* 33(3/4):585.

[8] Palim, Mark R. A. 1998. "The Worldwide Growth of Competition Law: An Empirical Analysis." *The Antitrust Bulletin* 419:105–45.

[9] Fiebig, Andre. 2000. "A Role for the WTO in International Merger Control A Role for the WTO in International Merger Control." *Northwestern Journal of International Law & Business* 20(2):233–54.

clearance is required before the agreement can be concluded.

IV. The rule-setting effect of merger control

Due to the additional work involved in the process—more than 60% of merger control regimes require premerger notification—merger control has been seen to deter acquisition transactions. Businesses are required to report proposed deals to merger-review agencies, and the deal cannot close until the agency has evaluated any potential anti-competitive effects. Financial pundits frequently criticise the drawn-out evaluation process. For example, the Brazilian antitrust agency faced blame that it took too long for its review of the 2004 acquisition of Garoto, a Brazilian chocolate maker, by Nestlé, a Swiss food and drink giant, only to revert it after two years[10]. Indian merger control has been criticized for a lengthy review process that can take up to 210 days; financial commentators predict that the merger control will cause takeover deals to dwindle. Generally, economists predict that merger laws will have a negative effect on CBAs[11]. However, merger controls can have a positive side: by establishing formal procedures for mergers and acquisitions (M&As) that were previously unclear or non-existent, they clarify the legal stages for transactions. The laws governing M&As are sometimes vague or non-existent in developing and least developed nations. Even in nations where pertinent regulations exist, they are often dispersed throughout multiple statutes rather than contained in a single act, which makes it challenging to ascertain what constitutes the proper course of action. However, the regulations and unwritten practices are outlined and made public with a formal merger control. This is especially advantageous for international businesses. When a developing nation enacts merger legislation, international businesses can more easily access them since the local legal firms publish the regulations in English. The English translation is sometimes posted online by the government itself. The ability of a merger control to define rules will encourage acquisitions by international businesses. Domestic corporations would not encounter as much procedural ambiguity as foreign acquirers would, as they are more accustomed to the rules and conventions of their corporate community. Rather, if there are no obligations for notifications and review processes, the absence of merger control may even be advantageous.

V. The signalling effect of antitrust laws

The institutional framework of a nation is crucial for foreign investors because their money will be governed by those institutions. Whether they would be treated equally in comparison to

[10] Welsh, Andrea. 2004. "Brazil's Antitrust Body Grows Bolder." *Wall Street Journal*, February 25.
[11] Buch, Claudia M. and Gayle DeLong. 2004. "Cross-Border Bank Mergers: What Lures the Rare Animal?" *Journal of Banking & Finance* 28(9):2077–2102.

domestic companies is one of the main worries of international acquirers. Large firms enjoy special treatment and close ties to government officials in many developing nations. Using anti-competitive tactics, incumbent firms try to defend their current market shares against competitors. International agencies like the World Bank, IMF, and OECD have pushed for the enactment of antitrust rules in developing nations in this area. The mere fact that a law is adopted establishes the overall framework for a country's economic policy, with market competition serving as the organising basis for economic activity, regardless of how heavily it is put into practice. It makes it abundantly evident to international investors that the government supports the market economy. Antitrust laws, in contrast to merger controls, are unlikely to stop domestic takeovers. In actuality, it had the opposite impact in the US experience. In the late nineteenth century, mergers and acquisitions became a feasible strategy for US corporations looking to expand, while antitrust laws prohibited anti-competitive agreements among major rivals. Businesses shifted their growth plans to mergers and acquisitions after the Sherman Act, which outlawed cartels, was passed in 1890.

VI. Conclusion

Researchers have looked into a number of strategies to bridge the institutional gaps in cross-national trade agreements. Bilateral agreements, like bilateral investment treaties (BITs), set down the terms and circumstances of transactions directly between the two nations, facilitating trade and economic interchange. IGO network connectivity fosters national affinities and trust and functions as an institutional framework for trade and foreign direct investment. This research suggests the spread of governmental restrictions on a specific transaction as a third element that can bridge the institutional gap. While it isn't as focused on fostering trust as IGO networks or as directly coordinating between nations as BITs, it does give market players legal familiarity and lowers procedural ambiguity. By controlling for financial considerations and IGO networks, I demonstrate that newly approved antitrust and merger regulations actually enhance transactions rather than decrease CBAs as is commonly predicted. In talks about the growth of international trade, the deregulation argument has dominated the conversation. Its basic tenet is that, barring deliberate governmental suppression, the market has a natural ability to distribute resources in the most efficient way possible.

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