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The Layer of Network and Institution: Antitrust and Merger Control on Cross-Border Acquisitions and Interorganizational Network

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ABSTRACT

The central tenet of institutional theory is that markets cannot function without social institutions, such as the laws, social networks, cultural norms, and corporate practices that regulate transactions. Intercountry spaces are hampered by the absence of institutional frameworks governing economic transactions since these institutions are primarily founded and function inside national borders. This stands in stark contrast to pro-deregulatory arguments, which believe that market integrations can occur through the removal of existing restrictions as opposed to the enactment of new ones. My empirical research clearly demonstrates that adopting nations witness an increase in incoming cross-border mergers and acquisitions when antitrust laws and merger regulations are introduced. Antitrust laws encourage overseas acquisitions by notifying adopting nations that they support international standards for market-oriented reforms. By providing adopting firms with clarity on otherwise ambiguous legislation, merger control expedites foreign acquisitions.

***Keywords**: IGO : Intergovernmental organisations ; FDI : Foreign direct investment ; WTO : World Trade Organisation.*

I. INTRODUCTION

This study looks at how government laws and international government networks interact to support international trade. It has been demonstrated that IGO networks encourage global economic interaction, including foreign direct investment and bilateral trade. IGO networks bridge the gap between domestic domains and intercountry space by providing support for legal institutions and contract enforcement. This leads to a rise in trade between the nations connected by these networks. Antitrust law serves as a signal to international acquirers that the adopting country adheres to the global norm, which is a market economy. On the other hand, merger

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control achieves the same goal by providing clarity on the legal process for acquisitions.

Network theory and institutional theory have been the main techniques used by economic sociologists to analyse market players' behaviour; yet, the relationship between the two has not received much attention in the literature. While networks among market actors aid in the development of trust, institutions offer formal and informal structures governing transactions. Implementing policies that align with international norms gives a nation legitimacy; this acts as a stand-in for the trust that a nation would develop from continuing its international contacts. According to my empirical study, a target country's adoption of antitrust legislation increases the flow of capital between country pairs; however, the effect is less pronounced when the pairs are more tightly related through IGOs. This shows that in order to facilitate economic transactions, IGO networks and adherence to international norms intersect. Conversely, when there is doubt or ambivalence about whether a particular institution complies with the standard, like a merger control, the institution enhances networks rather than replaces them. Normative uncertainty surrounds merger control: the financial community cannot agree on whether to support a recently implemented merger control in a developing nation. Some of them value the implementation of merger controls because the adopting nation is harmonising with global culture and the legislation is becoming more commonplace worldwide. The others, however, draw attention to the possibility that the merger control gives government agencies a great deal of latitude and creates a chance for foreign investors to be unjustly punished because of their ties to strong domestic firms or their patriotic beliefs. This study also makes a contribution by looking more closely at how the IGO network affects international commercial transactions. The sociologists who studied the influence of IGO networks on global economic transactions analyzed bilateral trade[5] (Ingram et al. 2005; Kwon 2012; Zhou 2010) and foreign direct investment[6] (Alcacer and Ingram 2013). When domestic firms are sold to foreign entities, it becomes a contentious political issue. Foreign acquirers need also manage current workforces with diverse cultural and behavioural norms. Over the past three decades, CBAs have grown significantly as the primary vehicle for industrial globalisation, while facing higher border barrier impacts than greenfield investments.

II. GLOBAL ECONOMIC TRANSACTIONS AND ITS GOVERNANCE

Economic trade occurs in a social context, as demonstrated by the contributions of economic

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[5] Ingram, Paul, Jeffrey Robinson, and Marc L. Busch. 2005. "The Intergovernmental Network of World Trade: IGO Connectedness, Governance, and Embeddedness1." American Journal of Sociology 111(3):824–58.

[6] Alcacer, Juan and Paul Ingram. 2013. "Spanning the Institutional Abyss: The Intergovernmental Network and the Governance of Foreign Direct Investment." American Journal of Sociology 118(4):1055–98.

sociologists. Networks, political regulations, and cultural norms all have an impact on market participants. In actuality, a variety of social forces regulate even seemingly pure economic transactions. The dearth of institutional structures between nations makes international transactions an attractive topic in this field of study. As the last arbiter of legality and contract enforcement, states are essential in supporting the formal institutions that underpin economic transactions. For instance, they "define and enforce property rights, which are the laws governing who owns and controls the means of production." Similar to these official establishments, states have historically produced informal institutions like cultures and conventions. These institutional frameworks that control trade are powerful inside their own countries, but they are not transnational. Intercountry space is thus described as a "institutional abyss," devoid of the institutional frameworks necessary to facilitate trade. Examining the reliance of market participants on the absence of regulatory agencies and consequent lack of enforcement is made possible by international transactions. Prior research has significantly advanced our knowledge of the sociocultural elements influencing cross-border commerce. It has been demonstrated by network theorists that IGO networks encourage global economic trade. Both bilateral trade and foreign direct investment rise as a result. This is a novel perspective because previous economic research has prioritised "hard" variables over "social" ones. For instance, advancements in communication and transportation technologies are critical to global trade. Bilateral trade between two countries is mostly determined by factors such as geographic distance and economic size. Exchange is made easier by IGO connectivity in two ways. It lowers transaction costs, to start. Transaction costs are incurred by the possibility of fraud on the side of either party; IGOs can lower this risk by establishing universal guidelines for transactions. For instance, the WTO facilitates trade agreements between its members and offers a procedure for resolving disputes. This is similar to domestic institutions like courts and governments, which lower transaction costs by providing legal support for contracts. Second, IGO connectivity creates ties across nations that promote trust and affinity. Previous studies on trade and foreign direct investment (FDI) have shown that IGOs that concentrate only on social and cultural issues as well as economic issues also have the effect of increasing economic exchange. International NGOs (IGOs) with a purely cultural focus, like the Nordic Children's Film Council, have the ability to foster a greater sense of understanding, compassion, empathy, and intercultural trust. Bonikowski[7] (2010) tests whether IGO connectedness promotes cultural similarities among countries, and shows that countries connected through IGOs tend to have

[7] Bonikowski, Bart. 2010. “Cross-National Interaction and Cultural Similarity: A Relational Analysis.” *International Journal of Comparative Sociology* 51(5):315–48.

homogenous cultures over time. In summary, IGO networks have the ability to promote economic interaction even in the absence of economic concerns. This is presumably due to the fact that inter-country relationships-based trust and affinity are effective means of facilitating transactions, particularly in situations where market players are uncertain. In that case, how would CBAs be impacted by IGO connectivity? IGOs don't offer CBAs any meaningful institutional options to lower transaction costs. Attempts to establish an international antitrust and merger law framework through IGOs akin to the WTO, which would harmonise disparate national legislation, have not shown fruitful results thus far. The main challenge is that, although while individual nations concur that a worldwide antitrust framework would be economically advantageous, they are reluctant to give up their authority over antitrust decisions, particularly those pertaining to merger approval. Politicians are vested in the decisions made in antitrust and merger proceedings because of their political significance. As a result, even within IGOs like the European Community that saw a high level of international market integration through institutional arrangements, individual nations have wildly disparate and disjointed merger approval processes, which results in enormous legal expenses. But IGOs should have at least as much of a relationship-building impact on CBAs as trade and foreign direct investment. This is due to the fact that a CBA needs more trust than commerce or foreign direct investment to overcome border obstacles. Trade has a higher border barrier effect since it is a less accessible form of international commerce than foreign direct investment (FDI). While a product exporter does not have to be involved in the running of a new business in a foreign nation, FDI investors do. When a foreign corporation operates in another nation, it has additional border barrier impacts since it has to adjust to new laws, labour laws, and cultural norms. Interestingly, FDI with larger border impacts can also be facilitated via IGO networks. Nevertheless, since CBAs still have greater border impacts than FDI, this scope can be further increased by looking at them. Target countries for foreign direct investment (FDI) nearly always welcome it, and government rivalry for FDI is intense. Local governments regularly reward foreign direct investment (FDI) with subsidies, tax exemptions, and other perks. Conversely, CBAs are not always well received. The purchase of domestic businesses by foreign corporations frequently sparks nationalistic feelings against the acquirers and public concerns about "leaking national wealth." Significant leeway exists for municipal governments to act arbitrarily when approving mergers. There is also uncertainty about how foreign-owned companies will be regarded in comparison to domestically owned ones, even in the event that a merger is permitted. In short, IGO networks' capacity to foster trust and affinity will make CBAs easier.

III. IGO NETWORK AND ANTITRUST AND MERGER CONTROL

Scholars have focused a lot of attention on IGO networks' ability to link market participants across national boundaries thus far. Foreign investors are informed by antitrust laws that a country is committed to a market economy and that it opposes anti-market activities including illegal state interventions and cartels among rival businesses. By outlining the terms of the deal in detail for external investors, merger controls institutionalise the process of acquisitions in a target nation. In general, the number of CBAs increases under both statutes. Potential transaction partners will have less need to rely on the trust developed through their cross-border connections when a state conforms to a global norm, such as stating its orientation towards a market economy, in order to look legitimate to the global society. Conversely, potential transaction partners will require more faith in a state before they will invest there if it seems illegitimate, for example, with a high likelihood of improper state interventions and laxity towards unfair competitions. Rich theories of legitimacy have been established by organisational scholars, and states can use these theories. Legitimacy is well defined by Suchman[8] (1995): “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions.” Organisations aim for legitimacy since it provides resources and aids in their existence; to achieve this, they follow societal standards. Insofar as these two things are congruent, organisations seek legitimacy by pursuing congruence between their structures and activities and the norms in the larger social system of which they are a part. States also belong to a global civilization with a unique set of norms and culture that academics refer to as the "world polity." Global society is neither anarchic nor solely driven by materialistic interests; rather, it is more akin to a polity whose members uphold normative and cultural values (such as political freedom, human rights, the environment, free trade, and accessible education), which in turn influence state structures and policies, macroeconomic orthodoxy, and numerous other contemporary norms that are prevalent worldwide. By implementing policies that are consistent with these international standards, states strive for legitimacy. Market economy orientation is one of the accepted worldwide conventions. Adopting antitrust legislation is a statement that a nation supports the market economy as the cornerstone of its economic policy, in line with the worldwide standard. The credibility that states obtain by means of this signal is especially advantageous to foreign corporations contemplating investments in developing economies. A foreign business entering an emerging country confronts significant economic risk since the government may have vested interests in native enterprises or may arbitrarily interfere with

[8] Suchman, Mark C. 1995. “Managing Legitimacy: Strategic and Institutional Approaches.” *Academy of Management Review* 20(3):571–610.

market competition. The target nation's government is, at least outwardly, opposed to these kinds of anti-competitive behaviour when antitrust laws are adopted. The benefits of an IGO network in fostering trust and the validity of antitrust overlap, and I believe they will eventually supplant one another. The conviction that one exchange partner won't take advantage of the other side's exchange weaknesses is known as trust. When investing in emerging markets, foreign investors require a greater degree of trust due to the higher degrees of uncertainty associated with the government and its institutions. The trust that is created via international relations via IGOs reduces these uncertainties. There are other ways to reduce uncertainty besides this, though. Potential target nations declare that they will not accept anti-competitive behaviour or illegal government intervention in the market when they enact antitrust legislation. The antitrust ethos aligns with the international standard. Even in cases where there is no tight contact between the target country and international organisations (IGOs), foreign investors may be inclined to make investments in a legitimate target country that has made a commitment to market principles. In contrast to antitrust legislation, merger controls are essentially the subject of no universal consensus or norm. Therefore, a country that adopts merger controls does not gain legitimacy from doing so. The financial community does not always embrace recently implemented merger controls. Under a merger control regime, any proposed transaction that satisfies specific requirements typically, a threshold based on the combined size and market share of the parties involved must pass a review procedure administered by government agencies. The length of the reviews varies by nation and usually last three to six months, during which time a proposed contract cannot be finalised. After all of this, the examining authorities decide whether to approve or disapprove the agreement based on how they assess its anti-competitive effects. Financial critics are frequently worried that the decision to accept or deny gives a significant amount of leeway for arbitrariness, in addition to the legal expenditures associated with merger evaluations. A merger study is simply a forecast of the current market shares' future course in the event that the proposed merger is carried out. A merger is considered anti-competitive and is not authorised if it is anticipated to result in a market share that is "too high" in comparison to societal benefits, such as consumer welfare through efficiency gains. But there isn't actually a set rule for how high is too high. Since every merger review system is different, there is a great deal of latitude for the governments that have implemented merger controls. Investors fear merger controls may be abused by nationalistic governments to stop their own "national champions" from being acquired by foreign companies or to approve only deals that serve the interests of companies with which they are affiliated. This is because of the possibility of review arbitrariness. The importance of trust is increased by the possibility of "bad" governments abusing merger control. When there is a greater possibility that they could be taken advantage of by possible partners, market participants rely more on trust. An IGO network builds enduring multichannel contacts that foster affinity and trust between two countries as a means of facilitating economic transactions. Fears that the government may use merger control unfairly can be alleviated if IGO linkages foster a certain degree of trust between two nations.

IV. Conclusion

CBAs, on the other hand, are a different kind of transaction where market players have to overcome more formidable obstacles like national borders. Barriers to CBAs include nationalist feelings, cultural differences and behaviours among domestic workers, and unclear legal procedures. According to my findings, IGO connectivity strongly encourages CBAs and aids in removing these obstacles. The way that IGO networks facilitate transactions validates the importance of trust in global trade. Since it is widely acknowledged that attempts to use IGOs for institutional coordination surrounding CBAs have failed, we can conclude that the major reason IGO networks are beneficial to CBAs is because they foster a sense of trust and affinity between nations. Empirical studies reveal that frequent encounters among nations really contribute to a gradual increase in cultural resemblance. IGO connectivity is one of the major variables contributing to this greater affinity, along with trade, phone conversations, and other forms of interaction. "The creation of trust in economic life is primarily due to these relations, rather than institutional arrangements or generalised morality [e.g. shared beliefs and norms]." The fundamental contributions of economic sociologists to our knowledge of economic life are rooted in trust and legitimacy. Contrary to what neo-classical economists believe, social relationships and symbolic meanings like culture, norms, and legitimacy also have a role in shaping the economic sphere. Network theorists and proponents of social capital have extensively researched the economic effects of trust, including how it affects individual performance, organisational advantages, and business structures. There have been two exceptions to the general lack of scholarly interest in the implications of legitimacy. For example, demonstrates how companies' stock values suffer when stock analysts believe they are not authentic. Furthermore, researchers have shown that a variety of policies, including neoliberal policies, have proliferated globally for country-level analysis. However, very few research has looked at the effects of the legitimacy that these programmes give governments.

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