ECONOMIC GLOBALIZATION AND COMPETITION - INSTITUTIONAL RESPONSES

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Abstract: Global firms' strategies affect domestic and international competition; conversely, countries abide rules from transnational institutions to tackle externalities derived from globalization transactions. This essay debates the global governance of antitrust, the rise of competition aspects in the global economy and the institutional response. First, it discusses stylized facts regarding economic globalization and competition. Second, it investigates on the conceptual foundations of trade and competition policies. Finally, it suggests that, despite the lack of formal regimes, there is a global institutional convergence in competition practices, based on "order without formal law" and "competition advocacy".

Keywords: Globalization, competition, governance, institutions

Resumo: A estratégia global das firmas afeta a concorrência doméstica e internacional, similarmente, os países obedecem a regras de instituições internacionais a fim de lidar com as externalidades derivadas da globalização. Esse ensaio debate a governança global do antitruste: o surgimento de aspectos concorrenciais na economia global e a resposta institucional. Primeiro, discutem-se fatos estilizados relacionados à globalização e à concorrência. Em seguida, investiga-se os fundamentos institucionais das políticas de comércio e de concorrência. Finalmente, sugere-se que, apesar da ausência de regimes formais, há uma convergência institucional global em práticas de concorrência, baseada, em "ordem sem lei formal" e "advocacia da concorrência".

Palavras Chave: Globalização, concorrência, governança, instituições.

1. Introduction

Competition is instrumental to a more efficient and innovative economy, it enhances economic welfare and encourage a fairer income distribution. In an economy with sound competition, consumers have a variety of products at lower prices, higher production and employment levels, while productivity and innovation thrives. Competition policies aims at increasing the overall competition environment in a domestic economy. Antitrust policy, by its turn, relates to specific policies and legislations to curb "market power" of

monopolies and oligopolies.

Trade policy is a set of measures and actions that determine the degree of economic integration of a country with foreign markets, the depth of negotiated trade agreements, as well as the main instruments applied to trading partners. Trade policy increases the level of exposure of national firms and economic sectors to imports and it may spur investment and firm entry, thus, it has an impact on the domestic competition.

The capture of public policy by private interests is a phenomenon typical of representative political systems. In this sense, trade policy is subject to the action of interest groups pushing to increase exports and to reduce imports. Although beneficial for domestic firms, by enhancing the market power of domestic monopoles and oligopolies, these actions may reduce domestic economic efficiency and consumer welfare. Besides, policies increasing the market power of exporting firms in international markets may be detrimental to the trade partners´ domestic economy. International cooperation emerged after the Second World War to create multilateral institutions in order to curb the protectionist pressures of domestic groups in trade relations, under the negotiating rounds of the General Agreement on Trade and Tariffs (GATT), later the World Trade Organization (WTO). Competition issues, meanwhile, have not followed the same track: an agenda dealing with "beyond the border" measures is stalled at the WTO. This essay aims to debate the international political economy aspects of trade and antitrust policies in order to analyze the transnational institutional convergence in global competition. It seeks to explain the global governance that emerged in international competition issues.

After this introduction, section 02 debates economic globalization and competition, it discusses the lack of progress in negotiations about competition in the multilateral trade agenda, *vis-à-vis* changes in the productive processes of transnational corporations. Section 03 examines theories of trade and competition. It argues that comparative advantage theory has an international character, whereas the concepts of economic efficiency and welfare – common in antitrust practice – fit more properly to a domestic context. Globalization and dynamic aspects of trade policies add further complexity to these theoretical traditions. Section 04, remarks that, despite the absence of a formal multilateral regulatory framework, there is a trend toward informal convergence in the governance of competition, based on "soft law" and "order without law", culminating with the concept of "competition advocacy". Following from the discussions, the essay acknowledges that institutional and political approaches should be part of the analytic tools of antitrust specialists.

2. Economic Globalization and Competition

2.1. Globalization and governance

Globalization led to deeper economic interdependence among countries. National economies became so closely intertwined that the traditional dichotomy between domestic and foreign economic policies became less significant. Globalization is multi-dimensional phenomenon, involving the impact of financial globalization on domestic policymaking, including welfare policies (Bardhan, 2006), domestic and international collective action (Cerny, 1995) and the differences in returns from factors of production (Rodrik, 1997). The liberalization of trade and investment, the financial regulatory reforms and the rapid technological developments have changed fundamentally the conditions of competition. Markets have become more open and interconnected, transcending national borders. These trends also changed the characteristics of *trade restrictions*: previously levied by national governments, now firms impose and suffer them, as their role in global markets increased (Büthe, 2014; Pérez Motta, 2016).

Economic globalization intensified the interdependence between national economies and international markets; hence, it reinforced the tension between rules addressed at multilateral trade agreements and domestic policies. The weakening of national governments capacity to carry on autonomous policies lead to a natural shift toward transnational forms of governance. However, contrary to what happened in trade and finance, transnational forms of governance in competition issues did not developed. A possible conflict between building up of transnational institutions and the loss of national political power prevailed in antitrust issues culminating in a different institutional trajectory and a distinctive global governance structure (Djelic, 2005).

Some methodological issues are necessary at this point. First, it is important to conceptualize "governance” as the manner in which power is exercised in the management of economic and social resources and qualifies the use of political authority (Drezner, 2007). The Bretton Woods institutions form the governance structure of the international economic order in the second half of the 20th century. These institutions are, among others, the International Monetary Fund (IMF), the Bank of International Settlements (BIS), the World Bank, the General Agreement on Trade and Tariffs (GATT), later turned into the World Trade Organization (WTO).

In this context, multilateral economic institutions, such as the ones quoted above, emerged and consolidated as mechanisms of regulation of international markets and created minimum rules of coexistence between countries. The literature of international political economy (IPE), also known

as "open economy politics", discusses the rationale behind the upsurge of these forms of global governance and the expansion of "international regimes" - a set of rules aimed at improving forms of international governance in several issues areas, and not only on economic relations (Kahler and Lake 2003, Lake 2009). Broadly speaking, these institutions and regimes were designed to tackle negative externalities derived from unregulated international economic relations, such as financial flows, or domestic (protectionist) trade policies, that could weaken the international order itself. In international finance, for example, it is necessary to address short run international financial flows, which can undermine domestic monetary and fiscal stabilization policies. In competition policy, though, there is a void. The lack of headway regarding competition regimes is puzzling when one considers that the doomed 1947/49 Havana Charter for an International Trade Organization (ITO), which created the GATT, included rules concerning anticompetitive business practices, more than 50 years ago.

International trade has experienced the establishment of multilateral rules since the 1950s, leading to a piecemeal but significant reduction in import tariffs and other trade related agreements, such as on services (General Agreement on Services – GATS) and on intellectual property (Trade Related Intellectual Protection –TRIPS), up to the creation of the WTO. In global competition, however, despite attempts, there was virtually no advance. A more structured and formal effort within the multilateral framework happened when countries launched a working group on trade and competition policy (WGTCP) at the WTO Ministerial Conference in Singapore in 1996. This project failed, however, amid the difficulty to advance the Doha round itself (Hufbauer and Kim, 2008; Evenett and Jara, 2013; Büthe, 2014).

Parallel to the multilateral trade agreements, regional forms of economic integration also liberalized trade flows among country members. Several regional integration experiences since the 1950s, created preferential trade agreements, free trade areas, customs unions and common markets. The European experience evolved to an economic integration mechanism that embarked several disciplines, culminating into full monetary and economic union that erected institutions aimed at regulating markets. European Union member countries seek to adopt a common regulatory framework in order to expedite economic convergence and to tackle negative externalities associated with different levels of development and domestic governance among member countries. Therefore, a common competition policy regime, complementary to the national systems, not only curbed market power of firms, but it was instrumental to the advancement of European values in the regulation of markets and towards a single market. (Manganelli et al., 2010; Warlouzet, 2010).

2.2. Globalization, value chains and competition

Contemporary productive dynamics of firms have importance for competition issues, for instance, the trend towards vertical productive integration through global value chains, which, among other characteristics, splits the assembling line of a single product among different countries. The overall reduction in tariffs for inputs and intermediaries enabled firms to fragment their production lines in various locations in order to explore the comparative advantages of different countries and to add value in each production stage (Aldonas 2013). Besides, regional integration processes allow countries to take the lead in terms of supplying factors of production such as "capital", high skilled labor and/or high-end technologies, whereas other countries provide basic inputs or low skilled labor.

More open foreign direct investments regimes (FDI) enhances the global strategies of transnational firms, which, by establishing subsidiaries, pursue national comparative advantages and seeking new markets. With the reduction of tariffs on inputs, there is an incentive to allocate productive plants in different countries. In this process, they acquire assets and, consequently, there was an increase in the number of international mergers and acquisitions (*M&A*). These processes also follow business cycles of international markets and may ensue higher mark ups, abuse of dominant position and monopolization in the national markets (Ghosal, 2000). Additionally, the greater control over productive inputs due to vertical integration in the value chains, for instance, can foreclose markets to competitors (Sekkat, 2006). Therefore, the opening to foreign investment, one of the premises of globalization, does not exclude anti-competitive practices of private companies.

According to Wooton and François (2010), the liberalization of world tariffs in the tradable sector may not improve world welfare in the presence of imperfect competition market structures in the distribution channels of domestic markets. They sustain that the degree of market power exercised by distribution sectors can serve as an effective import barrier. In an empirical exercise, they perceived that large retail chains partially captured the rents created by the trade in textiles and apparel– under the Multi Fiber Agreement (MFA). Hence, a GATS based agreements may boost trade only if it addresses the issue of domestic competition. The lack of multilateral institutional antitrust framework is a setback to world trade liberalization (François and Horn, 2007).

Briefly, companies are promoting global strategies in production and services, seeking comparative advantages of different countries, setting up production standards, relocating productive factors and entering new markets through increased direct investments and subsidiaries. These international movements can have effects on competition, for example: cartels beyond national borders, agreements to exclude foreign competitors, abuse of dominant

position, mergers between companies in different countries, vertical markets foreclosure in regional trade blocks, among others. Contrary to what occurred in international trade, there was little advance of a legal framework for international competition in multilateral and regional agreements, with the exception of the European Union. Therefore, it is worth stressing the expansion of trade and foreign direct investment did not prevent the surge in anticompetitive practices.

2.3. Incentives and political economy in competition policy

Trade policy is international in nature and deals with the incentives and barriers imposed by national governments to foreign trade and investment. Diplomatic /trade, negotiations among nations evolve on "mercantilist" interests, that is, trade surpluses and the accumulation of foreign exchange is positive, while trade deficits are bad. To offset this mercantilist bias, the various GATT negotiating rounds ensured mutual “markets access" among trading partners. Therefore, the principle of "reciprocity" is a cornerstone in the GATT/WTO system, creating domestic incentives: in a practical sense, exporting groups supplying to world markets would benefit from “market access” and “reciprocity”, compensating for the possible losses from groups competing with imports. Thus, trade liberalization created important political economy incentives, toward integration with the international economy. Free trade is beneficial to sectors with relative comparative advantage; as it improves national income and welfare, thus, offsetting for the domestic losers. In short, domestic exporting interests were instrumental to advance international trade agreements.

Competition policy, in contrast, deals with measures to curb domestic market power, due to the action of private firms in monopolistic or oligopolistic industrial structures, which may or may not have international causes and consequences. Despite the existence of private anti-competitive practices perpetrated by firms on an international scale, the degree of convergence regarding this discipline among countries was much weaker than the traditional trade issues. In the recent round of WTO negotiations (Doha Round), this degree was inexistent, culminating with the leaving behind of the multilateral discussions about competition rules.

Competition policy originally is "domestic" in nature, referring mainly to the national economic (consumer) welfare, within the jurisdiction of a country. This type of regulation, ultimately, includes foreign firms and, in fact, economic globalization increased the cases of anti-competitive behavior with international effects. Domestic antitrust authorities have faced cases that go beyond their domestic borders. Both the U.S. and the E.U. competition

authorities have already condemned anticompetitive practices with effect in its territory, regardless where the restrictive conduct happened. “Extraterritoriality” refers to the argument made by some countries (particularly the United States) so that their antitrust laws apply in their jurisdiction, even if the alleged misbehavior occurred in another jurisdiction (Utton, 2006; Sokol, 2011).

Competition policy relates to national legislations and to the enforcement ability and incentive of each country, without any adjustment and/or effective international control, on foreign firms. This may cause conflicts regarding the sovereignty over the extraterritorial application of national legislation, but there is a trend toward institutional convergence (Sokol, 2011).

Due to political economy interests, the maintenance of a good competitive environment tends to be diffuse, in comparison to trade policy, which addresses localized interest groups. Although competition can be considered a "public good", as it generates non-rival and non-exclusive benefits to all participants in a market, there is no well-defined group willing to do push (*lobby*) for antitrust policy whereas there is in trade policy – where exporting and/or import-competition groups stand out. Collective action behind interest groups influences domestic trade policy agendas, when there are well-defined winners and losers in terms of policy outcomes. (Olson, 1969; Magee et. all, 1982).

The incentives to set up a competition institutional framework are peculiar to each country. The perception about the need for a good competitive environment – as well as the importance given to the antitrust law *vis-à-vis* other public policies tends to vary. Even assuming that countries value competition, in general, there are choices in economic policies, depending on the stage of economic development and maturity of the economy, as well as of political and institutional domestic factors (Weymouth 2015). Additionally, the adoption of competition rules involves other policy spheres that add complexity to that balance. A common conflict regards industrial and investment policies – for example, credit incentive or preference margins – which can favor domestic oligopolistic groups’ vis-à-vis international competitors. Kowalski *et al* (2013) and Perez Motta (2016), for example, discuss the role of state-owned enterprises (SOEs) in trade policy and international economic relations, and the extent of their influence in domestic competition. It is worth stressing: besides exporting, many SOEs operate in imperfect competition structures.

The effects of anti-competitive practices from global suppliers and international private companies on domestic markets harm economic development. Therefore, the lack of the appropriate means to combat such practices may impose significant costs to developing countries (Tojo, 2002).

Hence, not to equip the country with an effective competition policy in order to protect (exporting) domestic actors, and to promote selective investment and industrial policies, can turn out into a flawed strategy and undermine the domestic economy, as it may make it easier for monopolistic and oligopolistic companies operating in the country, including foreign ones. In short, each country and society has its political option to contemplate competition, but given a globalized economy, the lack of doing so may be harmful to less advanced countries.

3. Political economy theories of trade and competition in global markets

Neoclassical economic theory supports that free markets create optimal allocation of scarce resources (production factors), bringing greater economic efficiency and social welfare. Competition is instrumental to achieve those aims. However, antitrust policy relies on less secure and transparent economic foundations than the traditional international trade theory because the perfect competition model can hardly explain what is seem both at international and domestic markets nowadays. Imperfect competition – that is, oligopolistic, monopolistic and monopolistic competition market structures, characterizes the modern economic order. Market power is progressively part of the international economic arena not addressed either by domestic antitrust institutions or by current international trade treaties. This section revises economic theory behind trade and competition policies.

3.1. Trade, comparative advantage and perfect competition

International trade theory relies on the concept of *comparative advantage*: countries have mutual benefits to specialize in what they are more capable to produce, then, engage in exchanges. There is an efficient allocation of resources and maximization of the returns from the productive factors (capital and labor), not only at the domestic, but also at the international level. The comparative advantage model assumes *perfect competition*, that is, the free flow of goods and factors of production in international and domestic markets, prices will equal marginal cost, and supply and demand will meet at equilibrium. Additionally, the *Heckscher-Ohlin* (*H-O*) model indicates that domestic sectors with comparative advantage - that use intensively the abundant production factor in the country - will benefit from free trade with world markets. Hence, such industries become competitive exporters, accruing more revenue and improving national income, thus, creating additional incentives to trade liberalization. Conversely, industries using intensively the scarce resource of the country compete with imported good, but since they are

less competitive relative to foreign rivals, even at the domestic market, these sectors will experience revenue loss and will oppose trade.

Economic welfare decreases in the presence of domestic tariffs - or their equivalents - here understood as the difference between the domestic and the international price of a good. The classical analysis indicate that import tariffs benefit the domestic producers and the government to the detriment of consumer. A negative net welfare effect ensues with the loss of consumer surplus, not offset by the increase in producer surplus and government revenue after protection. Krugman (1989) and Sacher (2005) shows that there are differences when the protection is set up as a quota instead of a tariff; due to monopole power, the former has a more pronounced impact on welfare, while, as long as, there is free entry, the later may be less harmful. The analysis is more complex when, in addition to tariffs, domestic monopolists apply trade defense mechanisms, such as antidumping.

This situation of welfare loss is detrimental when domestic producers have market power. Inefficiency will be greater, because the protected sector can exercise monopoly profits. All things equal, the profitability of domestic sellers correlates negatively with the ratio between imports and domestic consumption, especially if sector concentration is high (Schmalensee, 1989). Political economy logic shows that, despite the loss of domestic income, as long as import-competing sectors are able to organize and influence polices, they may be able to pass protectionist measures. Protectionist measures create negative externalities causing a decrease in global welfare.

As simple as the *perfect competition* model might be, its conceptual clarity provided a powerful justification to world trade liberalization. Therefore, despite domestic protectionist pressures in the period of crises, there has been a strong headway in trade liberalization in the last decades of the past century relied. The tariff reduction movement was particularly strong in primary and agricultural products, in which international markets approach the perfect competition model. However, this process had setbacks: the global financial crisis of 2008 brought about severe slump and protectionist measures, but the drop in trade flows was smaller if compared with the financial crush of the 1930s due to the building up of international institutions that attempted to mitigate the effects international crises (Evenett, 2010). Domestic protectionist measures were constrained by formal institutions that provided an international governance in trade issues, thus avoiding "*race to the bottom*" policies. The liberal institutionalist IPE literature discusses the creation of such institutions since the end of World War II: from an institutional perspective, multilateral trade agreements attempted to curb domestic protectionist backlash in order to sustain global welfare. International agreements – by compromising domestic support toward trade liberalization – tie the hands of policymakers and avoid

the return of restrictive policies in hard times. In short, global governance institutions are instrumental not only to advance tariff cuts and to curb protectionist pressures, limiting domestic market power in the tradable sectors, but also to spread a liberal ideology that prevailed in the international economic order.

3.2. Antitrust economics and imperfect competition

Antitrust policy aims to protect a competitive economic environment, to avoid market power and inefficiency and to increase consumer and general welfare. Additionally, antitrust wishes to ensure "free entry" to curb market power of incumbent firms. On the domestic market, such assessment depends on the overall analysis of the domestic antitrust agency, which may adopt a stringent approach regarding concentration, may emphasize consumer´s *vis-à-vis* producer´s interests and may use efficiency prerogatives. On the international market, these decisions, due to the lack of a multilateral consensus about global welfare and efficiency, are more difficult to reach.

Three dimensions raise the concern of antitrust authorities and justify the intervention in economic structures in order to reduce the risk of market power: collusion, mergers and abuse of dominant position. All these aspects are capable of causing an inefficient static balance, in which any monopolist, or group of companies, in the case of collusion, offers fewer products at higher prices. In a globalized economy, the operations of foreign companies abroad are likely to affect competition in other country's markets in all three mentioned aspects. Therefore, it is justified that national competition authorities worry about international aspects of antitrust.

Additionally, competition policy evolves in the context of other economic policies, such as industrial, investment, privatization and trade. Authors recognize the complementarity of these various public policies (Fox, 2011). There is a role for national governments in providing the correct incentives to facilitate adjustment to the process of economic globalization – which tends to increase competitive pressures - seeking synergies in these policies to promote economic growth. However, there are potential inconsistencies and tensions that emerged from recent developments in those policies. For example, a recent study from the OECD (2013) discusses the role of state owned enterprises (SOEs) in international trade: many are domestic monopoles, which expand their market power to foreign markets in (industrial) commodities – such as chemicals and minerals. Competition distortion may arise in international markets due to the role of these SOEs – even to the point of forming international cartels (Hoekman and Martin, 2012). The antitrust literature also expresses concern about how governmental interventions may

harm domestic competitive environment through regulations, granting of state and private monopolies, tariff and non-tariff measures (Abbott and Singham, 2013), but also due to special benefits to domestic firms in public procurement (Anderson and Kovacic 2009).

Economic models characterized by *imperfect competition*, with economies of scale, which require dynamic allocation of investments to provide economic returns are ubiquitous. "Strategic Trade Theory" adds elements of industrial organization to international trade theory in the direction that concentrated industries (oligopolies and monopolies) can promote economic efficiencies. Therefore, contemporary world trade may not easily fit traditional comparative advantage theory nor by traditional antitrust theory (Krugman, 1989). This dynamic aspect of international trade has been present in cases of mergers involving companies with high economies of scale and with pronounced learning curves for the maturating of investments in research and technology (R&D). In industries with high learning curves, markets do not encompass many participants and only a minority of companies will thrive. Therefore, "*first mover advantage*" policies that increase market power domestically – will help such companies in international markets. This process may increase national welfare in the end, but it may hamper competition domestically and, principally, abroad. François and Horn (2007), for instance, model how "*beggar-thy-neighbor*" competition policy, that is, the lax application of antitrust, can benefit domestic exporting firms.

Domestic government intervention can create "positive externalities" to other domestic sectors due to, for example, productive diversification. The potential benefits of economies of scale can be external or internal to firms. Internal economies of scale stem from high fixed costs of production. Whereas, external economies of scale exist when the best techniques of production of a firm can be quickly transmitted to another producer (learning-by-doing). Even when best techniques are protected by patents or by trade secrets, the competing firms generally benefit in some measure because the innovative companies cannot capture exclusively all the benefits of the technological breakthrough (positive externalities) (Bown and McCoullogh, 2013). Upon capturing foreign markets, this process leads to higher profits for the firms of the exporting country. A change in the domestic demand of the importing country toward the more competitive international supplier ensues, causing a loss of the domestic firm market share. a reduction in the scale of production and a fall of profitability.

On the international market, this process of domestic support may harm competition and be considered anticompetitive by antitrust authorities of other countries. For instance, in the case of mergers between international firms that have received subsidies and domestic protection. These firms may capture

markets abroad and create conditions for abuse of dominant position. These policies may spur antidumping appeals by trade partners at the WTO. Meanwhile, due to the lack of a multilateral international antitrust framework, the competitive aspects of such policies relate only to a bilateral basis, or the domestic antitrust agencies will address such mergers/conducts according to their national rules (*extraterritoriality*)

In short, despite the common conceptual background of international trade and antitrust policies (neoclassical economics), there is quite a difference in the application of theories to practical problems. The lack of institutional convergence toward transnational forms of regulation of anticompetitive practices amplify these divergences. The imperfect competition characteristics of international markets, in which governments act in favor of domestic companies, as well as the monopoly power of firms in foreign markets, highlights the conflict among these policies.

The lack of transnational institutional responses for the globalization of anticompetitive practices is a puzzle, when compared to other areas of international economic relations, where there is a minimal convergence in transnational regulations. Next, I discuss some alternative institutional explanations for the lack of such convergence in global competition.

4. Institutional responses to competition in international markets

Institutions are set of socially imposed constraints on individuals, shaping habits, cognitive experiences and references Institutional analysis wishes to untangle the causal mechanisms of a given economic phenomena, emphasizing the micro-macro relations between individuals and the society. Great emphasis is given by the actions and reasoning of agents as unit of analysis, such as countries and firms - under this social constrained environment. Institutions of economic governance are mechanisms to govern *common goods* (Ostrom, 1990). An open and liberal international economic order is a common good because, in addition to be non-rival and non-exclusive, it maximizes global welfare. Protectionist policies may create negative externalities and undermine that order. Hence, institutions that regulate and limit those policies bring stability to the system and preserve the order. Pagano (2011) discusses the complexity of institutions and the difficulty of implementing institutional changes in a context of interlocking complementarities, that is, stable and resilient institutional formats. His analogy with biology shows that “protectionism” and “subsidies” are common in nature and in institutional settings. Historical specificity matters because ‘past institutional choices open up some paths and foreclose others for future institutional development’ (Ostrom, 1990: 202).

Competition relates to cultural and social specificities of market transactions, long ingrained in domestic institutional settings within countries. Therefore, interlocked domestic institutions that protect national firms are difficult to change, to the detriment of the domestic and foreign competition environment. Industrial policies that support "national champions" may reduce competition domestically and abroad, decreasing global welfare. As discussed, transnational firms may act unilaterally taking advantage of domestic restrictive competition environments.

An alternative explanation for the lack of formal multilateral governance in competition regards the private provision of collective goods - the approach of *rules versus laws* (Ellickson, 1991). In that sense, national antitrust authorities and private parties might gather to decide on minimal rules without a formal biding legislation and an authority imposing them.

Therefore, the lack of formal framework to tackle competition challenges in global markets has brought about forms of alternative governance. Instead of formal bidding rules of international organizations, which often involve sanctions against deviant members – in international agreement´s parlance, "teeth" - *soft law* is an alternative to the *hard law*. This framework was possible due the emergence of an international competition community, which discusses antitrust issues and recommends policy directives on a non-binding basis, even though, according to some analysts, there is a process of homogenization of antitrust practices and rules under the influence of the U.S. antitrust. The International Competition Network (ICN) is an example of informal, non-bidding and networking organization (Djelic, 2010).

Furthermore, a bilateral agenda in antitrust issues also provides a basic governance framework. For example, the U.S. (Department of Justice and Federal Trade Commission) and European authorities (D.G. competition) established transatlantic ties in competition issues (Evenett *et al*, 2000). However, it is worth mentioning, mergers and anticompetitive conducts in knowledge intensive industries have often been causing divergence between authorities.

Institutions such as the United Nations Conference on Trade and Development (UNCTAD), the OECD, the World Bank, among others, developed directives in competition policy. Academics and epistemological communities proposed broad police guidelines to countries in order to provide them with minimum standards in several policy areas, including competition. Technical papers, studies, and policy recommendations on specific issue areas of competition enforcement help to spread such knowledge. (Sokol 2011; Fox, 2011).

The OECD, for example, lays down a series of guidelines in order to ensure competition concerns in the framework of broad public policies– the

Competition Assessment Toolkit (CAT) – suggesting their adoption by members and non-members countries (OECD, 2011). These guidelines relate to competition specific issues, such as public procurement and anti-cartel measures. That organization also attempts to gauge the overall effectiveness of the antitrust law, as well as the autonomy of the domestic antitrust authorities with a series of indicators (Alemani *et al*, 2013). Peer reviewed assessments of antitrust authorities and legislation circulate among member and non-member countries in order to evaluate the overall shape of competition institutions. In short, there has been an increase in the number of countries with competition legislations and authorities. Although there is no supranational body of antitrust practices, there is a process of institutional maturing of domestic competition authorities, which, due to the presence of a transnational networking is advancing a minimal set of rules.

One of the ideas these informal groups are advancing is "competition advocacy" - it is a mission for the competition authorities to advise other governmental agencies on the benefits of competition and to caution about the negative impacts of its lack. Evenett (2006) discusses the importance of competition advocacy, based on the economic theory of regulation, despite his skepticism about the enforcement ability of antitrust authorities in this area. The author acknowledges the importance of *competition advocacy*, which should not be an exclusive function of the antitrust authority, but part of several governmental policies.

In an international context in which countries refuse to create a formal competition regime in multilateral organizations and the international financial crises have increased governmental interventions, the approach of "competition advocacy" has gained popularity because its non-binding requirement and it had overall positive effects. The ICN defines competition advocacy as "actions taken by the competition authority related to the promotion of a competitive environment in the economic activities, through mechanisms unrelated to the legal mandate of competition law enforcement (non-enforcement), mainly through its relationship with other government entities in order to increase public awareness of the benefits of competition".[1]

Hence, competition advocacy is one of these issue specific areas of antitrust institutions that has reached a minimal consensus, due to the work of an international community. Cartel combat, in the intersection of trade and competition, is another example.

Despite potential productive efficiency effects, globalization brought about anticompetitive and collusive behavior among firms. In the past

[1] International Competition Network (ICN). http://www.internationalcompetitionnetwork.org/ (accessed 08/25/2017).

international cartels were ubiquitous up to the period between World Wars, when most national economies even supported them. In addition to acting in domestic markets, cartels channel their production to foreign markets. Export cartels motivated the adoption of anti-dumping legislation in many countries (Büthe, 2014). According to a "mercantilist" view of the economy, cartels with international operation may benefit a particular country to the extent that domestic cartelized producers extract economic rents from international consumers. Countries that are net exporters in cartelized sectors have incentives to pursue *beggar-thy-neighbor* competition policies - that is, a lax enforcement of domestic competition (François and Horn, 2007). International cartels in a given product amplify the problem, as there are (informal) agreements between firms from different countries, further decreasing world welfare. (Hoekman and Martin, 2012).

Despite the absence of formal international agreements, domestic and international cartels have been addressed effectively on a networking and co-operative basis, gathering domestic antitrust agencies and interested parts, under the auspices of ICN.[2] Hence, informal rules based on "cooperation" enforce cartel combat in countries that do not have the legal meanings to combat them.

Recent examples of cooperation among national authorities involve the alleged transnational cartel in the São Paulo´s metro system, which gathered several transport companies and multinational conglomerates from Spain, France, Germany, and Korea, among others. Brazilian – including the antitrust enforcement agency CADE – and foreign authorities joined forces to investigate and prosecute these companies. This cooperation advanced even considering that these firms operate in high-scale and high-end markets, characterized by imperfect competition. Many of them have thrived due to historical governmental support – in terms of subsidies, tax breaks and public procurement contracts- in their countries of origin.

Hence, this is an example on how cooperation in antitrust issues may arise, even when there are no formal multilateral agreement and in an imperfect competition market structure where political economy pressures are ubiquitous.

5. Conclusion

This essay discussed the relationship between international trade and competition in global markets. Due to global strategy of transnational firms, globalization affects competition in international markets. From a theoretical

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[2] http://www.internationalcompetitionnetwork.org/uploads/cartel%20wg/icn_chapter_on_international_cooperation_and_information_sharing.pdf (accessed 09/01/2017).

perspective, neoclassical economics identifies *competition* as an element for maximizing welfare and efficiency in markets. Contemporary international economy developments, such as economic and productive globalization integrated national economies and firms worldwide and set the incentives for the creation of regulatory framework in international trade.

Despite the expansion of formal international institutions and agreements aimed at regulating trade relations, no such arrangements happened in competition issues, which followed a distinctive institutional trajectory. The integration of productive chains and the internationalization of firms has impacts on domestic and international markets, so domestic antitrust agencies act to curb the domestic market power of firms that operate abroad. Besides, it is visible the relationship between market power and international trade with the preeminence of imperfect competition structures in global markets. Imperfect competition may create different equilibrium, characterized by economic concentration, and, due to dynamic effects, it may enhance domestic welfare, but not necessarily, it improves global gains. A political economy logic shows that national governments support domestic firms in global markets.

Therefore, relying on a technical approach – be it legal or economic - in global antitrust governance should not exclude from the analysis the driving forces of anticompetitive behavior, that is, market power and political power. In fact, in the aftermath of the financial crisis of 2008, it should be obvious that political power, and not only market power, should be at the core of antitrust analysis (Ayal, 2013). Hence, the researchers dealing with competition policy, who have greatly benefited from the gathering of expertise due to networking and co-operation, would also benefit from an institutional and political economy methodology. These methods may be able to grasp the resilience of domestic interest groups affecting policies and the consequences on global antitrust.

6. References

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