

## **What Extraterritorial Application of Competition Law Means for MNCs**

MICHAEL RISTANIEMI  
Legal Counsel, Metsä Group, Finland

### **Abstract**

Several competition law regimes around the world, including the EU and the USA, have adopted rules allowing their respective authorities to apply domestic competition law to activities occurring outside of their territory's borders. This paradigm presents a clear challenge especially to multinational corporations ("MNCs") that operate on an international scale and which consequently must concurrently adhere to the rules and regulations of several – and potentially conflicting – jurisdictions in their business operations. Moreover, competition law can be and frequently is used as a tool for furthering a single state's or region's goals in international trade and politics. One visible avenue of doing so is by applying competition laws on an extraterritorial basis. Last, the coherence of jurisprudence itself is damaged by allowing competing legal doctrines to apply simultaneously within a single jurisdiction as they would, should a foreign nation's competition laws be applied extraterritorially. All of this effectively constitutes a barrier to trade, which hits MNCs hardest in the form of legal uncertainty, increased costs and added administrative burden. The author studies the legitimacy and breadth of extraterritorial application of competition law and discusses its main implications for MNCs as well as suggests a potential way forward in the form of increased regional cooperation between competition authorities and legislators.

**Keywords:** competition law, extraterritoriality, international trade.

### **1. Introduction**

We live in the age of globalization, where international trade is ever freer – in part a result of successful work by international organizations, such as the World Trade Organization ("WTO"). Certain elements, however, hinder the development of even more free trade, one of which is competition law, which continues to substantially differ from one country to the next.

Harmonizing competition law has proved to be a considerable feat and one that has not gained true traction outside the European Union ("EU") and the Andean Community<sup>1</sup>. The incongruity is best illustrated by recognizing that not even one generally accepted purpose for competition law has been recognized as of today, but rather several spanning from protecting consumers to furthering foreign policy in the arena of international politics.<sup>2</sup> Efforts to find some common ground on a global level have nevertheless taken place especially through the WTO, as is further described in Chapter 3.

Several competition law regimes around the world, including the EU and the United States ("USA"), have enacted rules allowing their respective authorities to apply their

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<sup>1</sup> The Andean Community consists of Bolivia, Colombia, Ecuador and Peru and its Commission Decision 608 regulates free competition within the territory of one or more members by prohibiting and sanctioning restraints in competition affecting the region.

<sup>2</sup> See e.g. Dabbah 2010, pp. 36-44.

own competition laws to activities occurring outside of their region's borders, i.e. extraterritorially. While the desire for this added muscle is understandable from an authority's perspective, it does present a clear challenge especially to multinational corporations<sup>3</sup> ("MNCs") that operate on an international scale.

MNCs are significant players in the global market place and are involved either directly or indirectly in a large share of the business being carried out in the world of today<sup>4</sup>. Owing to this, MNCs are inevitably subject to much attention by the media and national authorities of the states in which their effect is felt. They are also often exposed to a large number of jurisdictions, each of which imposes its own rules and regulations that may occasionally conflict with rules of another applicable jurisdiction. As a result of extraterritorial application of competition law, MNCs face the challenge to concurrently adhere to the rules and regulations of even more jurisdictions.

This article examines the legitimacy and breadth of extraterritorial application of competition law and considers its main implications for MNCs and is based on certain assumptions. First, although each EU member state does have its own competition and trade policies as well as related laws, this article focuses on the views of the European Commission and the European Court of Justice ("ECJ") in terms of European views, as the EU forms one common market outside of which extraterritorial application of its laws would occur. Second, while various restrictions of competition may differ significantly from one another as such, the paradigm at hand affects MNCs equally regardless of such nature: mergers and acquisitions, other agreements between legal entities as well as conduct in a dominant position may all become problematic if subjected to extraterritorial competition law application. The divergent characteristics of each mostly affect the ways to attain clearance or potential sanctions, but not the existence of the issue itself. Thus my analysis does not differentiate between restrictions, but rather stays on a more abstract level in this regard.

## 2. Legitimacy of extraterritorial application of competition law

It is quite established principle of international law that states do have legislative jurisdiction within their own territory as well as extraterritorially as long as it concerns its own nationals.<sup>5</sup> The essence of this paper is however focused on the third scenario: extraterritorial application of competition law in those situations where a specific action, event or occurrence neither takes place within the specific territory nor is committed by nationals of the said territory.

One objective of this sort of application of competition law is to reach export cartels, which are generally not prohibited in the state where the export cartel is taking place, unless it affects competition in the said state's market<sup>6</sup>. Thus there are no clear bans in, for instance, the EU or the USA on the disruption of external markets. This absence of regulation could be viewed as a failure of the international community due to its overall

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<sup>3</sup> A multinational company can be defined as a corporation that has its facilities and other assets in at least one country other than its home country. (Source:

<http://www.investopedia.com/terms/m/multinationalcorporation.asp#ixzz29vxM7ntZ>).

<sup>4</sup> E.g. The Top 500 multinational corporations account for nearly 70 percent of the worldwide trade and this percentage has steadily increased over the past twenty years. (WTO 2014).

<sup>5</sup> Inazumi (2005) pp. 21-22 and Meessen (1996) pp. 67-69. See also e.g. Harvard Research on International Law: "Jurisdiction with Respect to Crime", 29 American Journal of International Law, Supplement 1, 435, 445 (1935).

<sup>6</sup> In the USA, cartels are traditionally prohibited per se, but a number of exceptions exist, one concerning export cartels under the Foreign Trade Antitrust Improvements Act (15 U.S.C. § 6a). In the EU, Article 101 of the Treaty on the Functioning of the European Union bans cartels, but based on effects of the cartel on the common market. A pure export cartel where effects occur mainly outside the EU would not likely be subject to this Article.

detrimental effects as described below in this paper and is a clear illustration of the somewhat protectionist nature of competition laws as an extension of trade policy.

Another purpose of extraterritorialism is to prevent a competition policy “race to the bottom”, which translates into seeking the jurisdiction which least restricts a company’s operations or projects. In this regard *Sweeney* does consider extraterritorially applied competition laws to be more widely useful, as several nations benefit from the enforcement actions of a single state in the form of more functioning competition.<sup>7</sup> My take is that this largely depends on the economic position of the concerned state within the global economy. Especially smaller-sized countries do not benefit, for instance, from stringent merger control regulations within their own state, while simultaneously larger, more powerful countries have higher thresholds for reviewing proposed transactions.

Third, while discussion has been going on for years about creating a global framework for free competition, *Sweeney* argues that such framework would inevitably be considered a compromise by many. Thus states with established traditions in competition legislation, such as the USA and the EU are likely to even prefer exporting their own competition laws and procedures where – in a sense – less compromise is required.<sup>8</sup> This is easy to agree to as such, but deepened regional cooperation, much like what has occurred in the EU, should be a more viable option to overcome such sense of compromise especially when considering the challenges in actually enforcing such extraterritorialism, as is described under Chapter 3 below.

Finally, it has been argued to be a way for especially the USA to gain access to foreign markets<sup>9</sup>. An example of this may be found in the case concerning photographic paper and film in Japan, where the USA argued that Japan treated imported film and paper less favorably by enacting certain laws and regulations affecting the sale and distribution of imported photographic film and paper and requested that a panel under the WTO be established. Such panel, called the Dispute Settlement Body did, however, not find in favor of the USA’s arguments.<sup>10</sup>

In absence of a better alternative and as already stated above, the EU and the USA have long ago in their competition case law and statutes recognized the following principle: the competition laws of a certain state reach any such entities whose actions harm or impede competition of said state. This is commonly and quite broadly referred as the “effects doctrine”, although the precise content and interpretation is not fully equal across jurisdictions. The origin of legislation allowing extraterritorial application of competition laws is credited to Section 1 of the Sherman Act<sup>11</sup>, which was applied on an extraterritorial basis the first time in *United States v. Aluminum Co. of America* (“Alcoa”) in 1945<sup>12</sup>. At the outset, such application created significant tension especially as most other states did not foster as developed a competition law regime as the USA. However, at present the volume of objections has decreased as states have ever more robust competition laws and, as mentioned above, may themselves have enacted a possibility to apply their respective laws based on an “effects doctrine”.

Several other jurisdictions are joining suit: the EU<sup>13</sup>, China<sup>14</sup>, South Korea<sup>15</sup> and India<sup>16</sup> – to name a few – have enacted a similar effects doctrine and *Gal* argues that Israel has the

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<sup>7</sup> *Sweeney* 2007, pp. 47-48.

<sup>8</sup> *Ibid.*, pp. 46-47.

<sup>9</sup> Whish – Bailey 2012, p. 494.

<sup>10</sup> See WTO 1998.

<sup>11</sup> The Sherman Antitrust Act, July 2, 1890, ch. 647, 26 Stat. 209, 15 U.S.C. 1–7.

<sup>12</sup> *United States v. Aluminum Co. of America*, 148 F. 2d.

<sup>13</sup> See EU case law under Chapter 4.

<sup>14</sup> Anti-Monopoly Law, Article 2.

jurisdictional leverage to apply it as well<sup>17</sup>. The reality is thus that statutes enabling extraterritorial application of a state's competition laws are surprisingly widespread and continuously spreading even further. Actual reliance on such statutes is, still today, rare in most jurisdictions. This will be further discussed under Chapter 4.

*Sweeney* does not question the legitimacy of such extraterritorial application, but rather draws the legitimacy from a state's desire to protect the economic wellbeing of its citizens.<sup>18</sup> This creates needed legitimacy in the eyes of a state's legislator enacting laws allowing such extraterritorialism and consequently legality within that state. How about legality in terms of international law? Generally recognized international law often actually considers that such extraterritorialism is a part of the "territoriality principle" inasmuch as a certain act affects a certain territory, although an opposition does exist<sup>19</sup>. Despite said legality, enforcement does not come without challenges.<sup>20</sup>

### 3. Challenges for authorities and possible solutions

#### 3.1. Challenges

A practical challenge for authorities in extending their competition laws abroad relates to the fact that aspirations likely always require the assistance of another state, since extraterritorial application of competition laws occurs, by definition, outside of the affected state's borders. This is by no means a given and without such cooperation, the enforcer is inevitably confined to the assets and presence that the company in question has within the enforcer's territory, such as subsidiaries, bank accounts and goods.

*Sweeney* argues that states are likely to refuse requests for cooperation.<sup>21</sup> Further, no relevant multilateral treaty exists to prevent refusal, which renders it quite arduous for officials to ensure efficient and consistent enforcement. The treaty coming closest is the Hague Convention on Evidence<sup>22</sup> based on which contracting states are obligated to comply with evidence requests of other contracting states, subject to certain significant limitations. The Hague Convention does not apply to criminal matters and effectively does not allow pre-trial discovery for which reasons it has – as of the date of writing this paper – been seldom used in competition law matters.<sup>23</sup> This is despite the fact that contracting parties include significant states, such as most EU member states, the USA, the People's Republic of China and Russia.

*Sweeney* suggests that the lack of information sharing is due to a lack of trust and that states may not be convinced that a possibility for information sharing is worth the downside of communicating confidential information of their citizens abroad.<sup>24</sup> Under the auspices of a proper multilateral framework, states may feel a stronger sense of reciprocity and consequent justification for providing such assistance in comparison with ad hoc requests. This idea is further discussed below under Section 3.2.

Another challenge concerns the impact on the relationship of two states as a result of either state "meddling" in the affairs of the other state, for instance in case the intended action would concern an especially important industry or business of a particular state. Trade policy must thus be taken into consideration. This, in turn, consequently reduces

<sup>15</sup> Monopoly Regulation and Fair Trade Act, Article 2-2.

<sup>16</sup> Section 32 of the Indian Competition Act, 2002.

<sup>17</sup> Gal 2009, pp. 3-6.

<sup>18</sup> *Sweeney* 2010, pp. 221-222.

<sup>19</sup> Kaczorowska 2000, p. 122.

<sup>20</sup> Inazumi 2005, pp. 21-22.

<sup>21</sup> *Sweeney* 2007, p. 82.

<sup>22</sup> Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters.

<sup>23</sup> *Sweeney* 2007, pp. 75-77.

<sup>24</sup> *Ibid*, p. 82.

predictability from an MNC perspective as application may depend on the presumed reaction of all states involved.

Finally, there are also clear tension-creating differences between legal systems involving matters such as evidence collection. For instance, while discovery processes are commonplace in the USA, civil law jurisdictions are unlikely to be able to comply with US authorities' requests to assist with such evidence gathering processes.<sup>25</sup> This clearly dilutes the significance of any assistance that a state would provide particularly from a common law jurisdiction's perspective.

These policy tensions have resulted in blocking statutes that certain states have enacted to prevent companies from adhering to extraterritorial competition provisions. The most well-known of these is the Protection of Trading Interests Act 1980 in the UK, which attempts to restrict the effects of US antitrust law in the UK, but others exist as well at least in Canada and in Australia<sup>26</sup>. Hence, the reach of a state's enforcement possibilities is a somewhat untested and largely dependent on the political sensitivity of the issue at hand and on the relations of the states in question.

### 3.2. Possible enforcement resolutions

As one may assume, the international community has not been idle in attempting to mitigate the above-mentioned challenges. In fact, elaborating on the potential avenues to reach a resolution would require a paper in itself. Regardless, it is worthwhile to briefly sidestep to provide an overview of this.

The principal way for authorities to attempt to minimize this enforcement challenge has been to conclude bilateral cooperation agreements, which are also known as comity agreements. Such cooperation often enables information sharing, taking into consideration the other party's interests in enforcing its competition laws and even may include a party's right to request the other party to take measures in order to protect the interests of the requesting party in its territory. Agreements containing the latter provision are called positive comity agreements, an example of which exists between the USA and the EU<sup>27</sup>. These bring some additional tools to the enforcement challenge facing competition authorities, but do contain two clear hindrances: comity is always voluntary and requires that an act is against competition laws in both contracting states.<sup>28</sup> Consequently comity is likely to function only when two states' interests are aligned<sup>29</sup>, which is not nearly always the case.

The WTO has actually attempted to establish a global treaty concerning basic principles in fair competition for several decades already. This effort was most pronounced as a part of the Doha Declaration, a result of the WTO's Fourth Ministerial Conference in 2001. Competition matters were unfortunately dropped from the agenda by a decision in 2004 especially due to the objections of developing countries, which considered the proposed competition principles overly restricting<sup>30</sup>. *Wood* however argues that this matter is not forgotten, but merely on hold, since global trade inevitably requires restraining rules of competition in order to function.<sup>31</sup>

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<sup>25</sup> *Ibid.*, p. 72.

<sup>26</sup> For Canada see the Foreign Extraterritorial Measures Act 1985 and for Australia the Foreign Antitrust Judgment (Restriction of Enforcement) Act 1979.

<sup>27</sup> See 1991 EU/US Competition Cooperation Agreement and 1998 EU/US Positive Comity Agreement.

<sup>28</sup> OECD 1999, pp. 4-6, 12.

<sup>29</sup> *Inter alia* Papadopoulos agrees with this interpretation (2010 pp. 75-76).

<sup>30</sup> Decision Adopted by the WTO General Council on 1 August 2004.

<sup>31</sup> *Wood* 2005, p. 313. *Wood* has actually published an essay containing a proposal for a suitable global competition law code. For this, see *Wood* 2005.

Without success in creating a broad multilateral treaty addressing competition issues, focus has turned to the International Competition Network (“ICN”) that promotes cooperation between national competition authorities and soft law tools, such as publishing best practices that national authorities can choose to adopt. However *Sweeney* does not consider this to be a feasible avenue for the long term, but rather a more interim compromise.<sup>32</sup> I would have to agree that the maximum potential for such soft law measures is limited.

A step in the right direction both in terms of facilitating enforcement for authorities and especially by improving predictability for MNCs would be to enhance regional cooperation as has been successfully done in Europe through the EU. It may be easier for states to find more similarities with each other on a regional level and may hence be able to easier find common ground to agree on. This is especially the case where states’ trade profiles resemble each other, such as whether participating states are all so called developed countries or developing countries.<sup>33</sup> Regional organisations elsewhere, such as AFRICOMP and COMESA also possess the potential for such cooperation and actually do have provisions enabling it. At present they just lack execution<sup>34</sup>.

#### 4. Has this actually been applied?

Jurisprudence aside, the business world resonates best with what actually happens or what could realistically happen. Thus it is sensible to examine if the effects doctrine is a true issue in today’s world or a mere point of academia. The quick answer is both yes and no.

The EU is and has for a while been in a state of indecisiveness, as while the Commission has embraced the effects doctrine, the ECJ has not and has instead linked cases to the territoriality or implementation doctrines as much as possible<sup>35</sup>. An example of this was seen in the Wood Pulp cartel case in which the ECJ concluded that: “(i)f the applicability of prohibitions laid down under competition law were made to depend on the place where the agreement, decision or concerted practice was formed, the result would obviously be to give undertakings an easy means of evading those prohibitions. The decisive factor is therefore the place where it is implemented.”<sup>36</sup>

*Whish* feels that the Commission or ECJ will not have to rely on the EU doctrine of effects as a basis for their jurisdictional reach, but rather can easier find support from the ECJ’s reasoning in Wood Pulp in which it divided anticompetitive in two: the formation of an anticompetitive agreement and its implementation. While the former might occur between companies outside the European Economic Area (“EEA”), such implementation of cartel agreements did occur within the EEA and was thus within the ECJ’s jurisdiction.<sup>37</sup>

It is however noteworthy that the Gencor merger case shows that the effects doctrine is nevertheless recognized and has actually been used in the EU, as said case concerned the proposed merger of two South African mining companies. The merger was approved by South African authorities, but was not allowed by the Commission as a result of which Gencor argued that the Commission was lacking jurisdiction. The ECJ’s reply to this was

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<sup>32</sup> Sweeney 2010, pp. 9-11.

<sup>33</sup> This approach is also supported, inter alia, by Gal (2010) and Guzman (1998), pp. 1546-1548.

<sup>34</sup> UNCTAD (2009), p. 3.

<sup>35</sup> See the following principal case law: Case 48-69, Imperial Chemical Industries Ltd. v Commission of the European Communities, ECR 619 (1972). (Dyestuffs). Joined cases 89/85, 104/85, 114/85, 116-17/85 and 125-9/85, A Ahlstrom Oy and others v. Commission, ECR 5193 (1988). (Wood pulp). Case T-102/96, Gencor v Commission (1999). (Gencor).

<sup>36</sup> Wood pulp, para. 16.

<sup>37</sup> Whish – Bailey 2012, p.497.

that: “(a)pplication of the [Merger] Regulation is justified under public international law when it is foreseeable that a proposed concentration will have an immediate and substantial effect in the Community”<sup>38</sup>. This is a clear illustration of the detrimental nature of extraterritorial application of competition law for MNCs, as the authorities decisions are in clear conflict with one another. Moreover, as Kaczorowska duly notes, nothing would prevent authorities of even more states claiming jurisdiction in a proposed merger, despite such merger occurring solely between two companies of the same nationality, as several mergers do have effects globally<sup>39</sup>.

Turning to the USA, the US Foreign Trade Antitrust Improvements Act, which helps define the extraterritorial reach of the Sherman Act, requires that an agreement must have a “direct, substantial, and reasonably foreseeable effect” on US commerce in order for extraterritorial application to be possible<sup>40</sup>. The first landmark case in the USA in extraterritorial antitrust application came with the Alcoa case, which was briefly outlined above in Chapter 1<sup>41</sup>. Thereafter US authorities have continued with extraterritorial application of their antitrust laws in cases such as Hartford in which the Supreme Court confirmed that US antitrust laws apply to conduct that “was meant to produce and did in fact produce some substantial effect” in the US<sup>42</sup>.

A boundary of sorts was reached in the USA with the Empagran case in which the Supreme Court held that where anticompetitive behavior, such as a price-fixing agreement, “significantly and adversely” affects both customers outside the USA and customers within the USA, but “the adverse foreign effect is independent of any adverse domestic effect”, plaintiffs who allege that they have been injured by the foreign effect cannot rely on the jurisdiction of US antitrust laws or courts.<sup>43</sup> This ruling is the outcome that was urged by the International Chamber of Commerce and many governments around the world and somewhat clarifies the limits of the breadth of the effects doctrine, as interpreted by the USA<sup>44</sup>.

The EU and the USA are so far the primary states to have applied their competition regime on an extraterritorial basis, which is most likely linked to their longer-than-average tradition of having competition legislation in existence. However there is no reason to believe that this status quo will remain as it is forever.<sup>45</sup> *Sweeney* argues that until now, this hesitance is a result of a historical negativity towards extraterritorial application and due to a lack of sufficient power in world trade<sup>46</sup>. As described above in Chapter 2, several other states have embraced rules mimicking the effects doctrine and thus possess the potential for such application.

In conclusion, it seems that while the potential to impose competition law extraterritorially is widely present and real, states do appear to avoid such application by primarily exhausting other avenues provided by their competition laws. Perhaps this is because it seems somewhat controversial in light of international law. *Kaczorowska* argues that the effects doctrine has not been fully accepted as a principle of international

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<sup>38</sup> Gencor, para 90.

<sup>39</sup> Kaczorowska 2000, p. 121.

<sup>40</sup> Foreign Trade Antitrust Improvements Act of 1982, 15 U.S. Code § 6a.

<sup>41</sup> Supra 12.

<sup>42</sup> Hartford Fire Insurance Co. v. California, 509 US 764 (1993), p. 796.

<sup>43</sup> F. Hoffmann-La Roche Ltd. v. Empagran S.A. et al., 123 S.Ct. 2359 (2004), p. 1.

<sup>44</sup> Including the United States itself, Belgium, Canada, Germany, Ireland, Japan, and the United Kingdom.

<sup>45</sup> Kovacic 2003, p. 309.

<sup>46</sup> Sweeney 2010, p. 245.

law and that it is actually is uncertain how widely the effects doctrine can justify the extraterritorial application of competition laws<sup>47</sup>.

However, it is noteworthy that *Sweeney* argues that the notion of extraterritorialism in competition matters has nonetheless constantly become more prevalent and will continue to be relevant going forward. This is in part due to the constantly developing competition regimes in addition to the USA and the EU, but not necessarily because this approach would be optimal – it is rather more likely in the absence of better options to attempt to enforce adequate laws protecting competition.<sup>48</sup>

## 5. Effects and implications for MNCs

In this closing Chapter I would like to point to the many implications and effects in general for MNCs resulting from the mere potential authorities possess to apply competition law extraterritorially. It is noteworthy that irrespective of the frequency of actually being applied, the existence of such potential already forces MNCs to take extraterritorial application into consideration, which results in inevitable effects as described below.

Competition law can be and frequently is used as a tool for furthering goals in international trade and politics. One visible avenue of doing so is by attempting to extend the jurisdictional reach of a state's laws and enforcement, as described above. One clearly resulting impact is lesser legal certainty and predictability and the effect of overlapping requirements on international trade as a whole. Competition laws of several different states may be conflicting, either on purpose or by accident<sup>49</sup>. Ensuring group-wide compliance with each state's respective laws is certainly challenging enough in itself for MNCs even without having to consider that additional laws may potentially apply on an extraterritorial basis.

The coherence of jurisprudence itself is damaged by allowing competing legal doctrines to apply simultaneously within a single jurisdiction. This cannot be satisfactory to legislators or law enforcement and certainly not to companies trying to conduct their business in a way that is legal. This too contributes to a heightened sense of unpredictability, which inevitably has certain behavioral implications in the investment and operating patterns of MNCs on a general level.

The main implications for MNCs are twofold: increased competition compliance cost from divergent substantive regimes as well as additional burden from multiple notification and other divergent administrative requirements. To a consumer, these will inevitably translate as higher-than-necessary prices and less investment in new markets due to the burden and uncertainty.<sup>50</sup> The International Chamber of Commerce has recognized the detrimental effects of extraterritorial application of laws – including competition laws – to global trade and has attempted to encourage states to limit such conduct and instead utilize principles of international comity and moderation.<sup>51</sup>

A material non-political underlying reason for including the potential to extend the application of competition laws beyond a state's borders seems to relate to the risk of export cartels, which otherwise are often not sanctioned in the state of export, as

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<sup>47</sup> Supra 19.

<sup>48</sup> *Sweeney* 2007, pp 86-87.

<sup>49</sup> A topical, albeit non-competition-related example is US trade sanctions, which attempt to apply extraterritorially, but which the EU has countered by issuing The Council Regulation (EC) No. 2271/96 of 22 November 1996 (as amended), which expressly prohibits companies of member states from complying with such US extra-territorial sanctions regulation.

<sup>50</sup> Kovacic 2003, pp. 309-310.

<sup>51</sup> ICC 2006, pp. 4-5.



described above<sup>52</sup>. A proper – and logical – solution would thus be to enter into a multilateral treaty actually banning the formation of export cartels, as proposed by inter alia *Hoekman*.<sup>53</sup> Another issue is, of course, whether a broad enough consensus for doing so can be attained – this goes back to the point of the non-existence of a single purpose for competition laws and different types of states, justifiably, having divergent needs in order to compete in the global marketplace.

States understandably desire a method of comprehensively being able to ensure effective competition in their territory. However, from the perspective of a single business – which creates said competition in the first place – the current arrangement is far from optimal.

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<sup>52</sup> See *supra* 6.

<sup>53</sup> Hoekman 1997, pp. 12-13.

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**Michael Ristaniemi** is a graduate (LL.M.) of the Faculty of Law at the University of Turku and has several years of experience of working both in-house and at leading Finnish and international law firms.

Professional focus areas in addition to competition law include intellectual property law, general corporate law and trade compliance issues.

Currently the author is an LL.D. candidate at the University of Turku, Finland and Legal Counsel at Metsä Group, based in Helsinki Finland.

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