THE THIRD WAVE OF GLOBALIZATION IN COMPETITION POLICY: UNCERTAINTY, FRAGMENTATION AND INSTITUTIONAL EXPERIMENTATION

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Abstract

This article examines the globalization of competition policy through three waves. The first, led by the U.S. in the 1990s, embedded antitrust within the Washington Consensus, promoting worldwide diffusion of regimes, enforcement standards, and market-liberalization principles. The second, in the 2000s, advanced harmonization and convergence through international networks, capacity-building initiatives, and the promotion of "best practices" as global benchmarks. Since the mid-2010s, a third wave has emerged as jurisdictions react to uncertainty, fragmentation, and institutional diversity by experimenting with alternative regulatory approaches, breaking with the earlier convergence trend. Rather than signaling a retreat from globalization, this phase reframes it as a decentralized, adaptive, and more politically contested process. We argue that the third wave represents a critical departure from previous models, opening opportunities to reimagine global competition policy through a democracy-enhancing framework—capable of strengthening cooperation on transnational challenges while safeguarding national autonomy and fostering institutional pluralism.

Keywords: Competition Policy; Globalization; Institutional Convergence; Regulatory Experimentation; Democracy-Enhancing Governance

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INTRODUCTION

In an age of cross-cutting crises,[1] one might expect the retreat of global markets as a constitutive element of the liberal economy that has shaped the world since the 1990s.[2] Yet, globalization persists. This is not to disregard the numerous critiques of liberal projects centered on the full liberalization of trade,[3] nor does it overlook how various actors have profoundly reshaped

[1] *See* Adam Tooze, *Welcome to the World of the Polycrisis*, FIN. TIMES (Oct. 28, 2022) https://www.ft.com/content/498398e7-11b1-494b-9cd3-6d669dc3de33 (describing the recent entanglement of "economic and non-economic shocks" as a "polycrisis," where "it no longer seems plausible to point to a single cause and, by implication, a single fix"); and Peter Frankopan, *The Age of Crisis*, 18 CAMB. J. REG. ECON. SOC. 249, 251 (2025) ("we are at the dawn of an age of crisis, in an era of perpetual and manifold existential problems that should keep us awake at night, regardless of our political persuasions, our religious beliefs, our ethnicities or our outlook on life"). *See also* WORLD ECONOMIC FORUM, GLOBAL RISKS REPORT 2025 6 (2025) (indicating a deepening sense of global crisis and fragmentation, amid widespread skepticism about institutional capacity to manage escalating risks).

[2] *See* Andrew Ross Sorkin et al., *Wall Street Warns About the End of Globalization*, N.Y Times (Mar. 24, 2022), https://www.nytimes.com/2022/03/24/business/dealbook/globalization-fink-marks.html?smid=tw-share; and *The World's Economic Order Is Breaking Down*, ECONOMIST (May 9, 2024), https://www.economist.com/briefing/2024/05/09/the-worlds-economic-order-is-breaking-down.

[3] *See*, *e.g.*, JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS (2002); Branko Milanović, *The Two Faces of Globalization: Against Globalization as We Know It*, 31 WORLD DEV. 667 (2003); ALBERTO ALESINA & ENRICO SPOLAORE, THE SIZE OF NATIONS (2005); DANI RODRIK, THE GLOBALIZATION PARADOX: DEMOCRACY AND THE FUTURE OF THE WORLD ECONOMY (2011); and BRANKO MILANOVIĆ, GLOBAL INEQUALITY: A NEW APPROACH FOR THE AGE OF GLOBALIZATION (2016). *See also* Italo Colantone et al., *The Backlash of Globalization*, *in* 5 HANDBOOK OF INTERNATIONAL ECONOMICS 405 (Gita Gopinath et al. eds., 2022).

the global dimension of the market economy over the past decades.[4] Still, a common thread sustains the drive for globalization. Ideologically, actors from diverse political fields have reinvested in the creation of transnational agendas aimed at fostering a global economy based on international trade, rather than opposing it.[5] Materially, the economy has remained entrenched in its international dimension, with trade flows expanding significantly over time, even amid recurrent disruptions.[6] These dynamics continue to shape the

[4] Several observers suggest that, rather than coming to an end, globalization is undergoing significant transformations across its multiple dimensions. *See*, *e.g.*, Jeff Desjardins, *5 Hidden Ways that Globalization Is Changing*, WORLD ECON. FORUM (Feb. 14, 2019), https://www.weforum.org/stories/2019/02/5-hidden-ways-that-globalization-is-changing/; Erik van der Marel, *Globalization Isn't in Decline: It's Changing* (ECIPE Policy Brief, No. 6, 2020); Martin Wolf, *Globalisation Is Not Dying, It's Changing*, FIN. TIMES (Sep. 13, 2022), https://www.ft.com/content/f6fe91ab-39f9-44b0-bff6-505ff6c665a1; Jon Hilsenrath & Anthony DeBarros, *Globalization Isn't Dead. But It's Changing*, WALL ST. J. (Jan. 16, 2023), https://www.wsj.com/articles/globalization-changing-markets-trade-11673627929; and *Globalisation Isn't Dead. It's Changing*, FORBES (June 2, 2025), https://www.forbes.lu/globalisation-isnt-dead-its-changing/.

[5] *See*, *e.g.* Harrison Karlewicz, *A Socialist Response to Neoliberal Globalization*, JACOBIN (Oct. 1, 2020), https://jacobin.com/2020/01/globalization-socialism-capital-controls (proposing a socialist approach to trade policy focused on reforms to foster equitable global development and counter neoliberal globalization); David Boaz, *In Defense of Globalization*, CATO INSTITUTE (Sep. 22, 2023), https://www.cato.org/commentary/defense-globalization (defending globalization from a libertarian and classical liberal perspective as a path to prosperity, peace, and the spread of Enlightenment values); Jeb Hensarling, *The Conservative Case for Globalization*, CATO INSTITUTE (May 30, 2024), https://www.cato.org/publications/the-conservative-case-for-globalization (arguing that free trade aligns with longstanding conservative principles of personal and economic freedom, national prosperity, and constitutional governance); and Inu Manak & Helena Kopans-Johnson, *The Progressive Case for Globalization*, CATO INSTITUTE (May 30, 2024), https://www.cato.org/publications/the-progressive-case-for-globalization (contending that postwar trade liberalization advanced peace, poverty reduction, and shared prosperity, core to the progressive agenda). Despite these accounts of transnational agendas, far-right movements increasingly dominate anti-globalization narratives, prompting the left—once a leading critic of globalization—to recently shift toward seeking alternative models of globalization. *See* Dani Rodrik, *The Abdication of the Left*, PROJECT SYNDICATE (July 11, 2016), https://www.project-syndicate.org/commentary/anti-globalization-backlash-from-right-by-dani-rodrik-2016-07; Thomas Piketty, *Reconstructing Internationalism*, LE MONDE (July 14, 2020), https://www.lemonde.fr/blog/piketty/2020/07/14/reconstructing-internationalism/; and Helen Andrews, *The Death of the Anti-Globalization Left*, COMPACT (Nov. 25, 2024), https://www.compactmag.com/article/the-death-of-the-anti-globalization-left/.

[6] *See* Stéphanie Thomson, *Is Globalization Dying? An Economic Historian Weighs Up the Evidence*, WORLD ECON. FORUM (Aug. 2, 2024) (indicating that, despite recurrent crises, trade flows remained resilient and expanded, with perceived slowdowns reflecting relative shifts between domestic growth and trade rather than actual deglobalization); and DHL, DHL TRADE ATLAS 2025 12-22 (2025) (highlighting that despite high trade policy uncertainty, global trade continues to grow, with forecasts projecting sustained expansion over the next

evolving rules that govern markets and societies in this global dimension, while those same rules, in turn, shape these dynamics in a feedback loop.

Understanding this ever-shifting landscape requires revisiting the very notion of globalization. Despite disputes over its meaning, globalization operates as a multidimensional process of global integration that reorganizes social, economic, and political relations through transnational flows and networks.[7] Markets naturally play a central role, as their growing international dynamics introduce new patterns of production and distribution and enable the near-unrestricted mobility of capital.[8] Nevertheless, globalization does not simply emerge from the spontaneous expansion of the market economy; it also results from deliberate efforts to reshape the institutional foundations of the global economy,[9] in a reconfiguration where

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five years across regions and product categories).

[7] *See* DAVID HELD ET AL., GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE 16 (1999) (defining globalization as "*a process (or set of processes) which embodies a transformation in the spatial organization of social relations and transactions - assessed in terms of their extensity, intensity, velocity and impact - generating transcontinental or interregional flows and networks of activity, interaction, and the exercise of power*"); and Jan Aart Scholte, *Defining Globalisation*, 31 WORLD ECON. 1471, 1478 (2008) (identifying "globalisation as the spread of transplanetary [...] connections between people," which marks "a shift in the nature of social space" enabled by "reductions in barriers to transworld social contacts"). *See also* Jens Bartelson, *Three Concepts of Globalization*, 15 INT'L. SOCIOL.180 (2000) (approaching globalization through three ideal-types—*transference* as intensified exchanges between stable units, *transformation* as systemic reconfiguration, and *transcendence* as the dissolution of boundaries—each reflecting shifting ontological assumptions about global integration).

[8] *See* ALAN M. TAYLOR & MAURICE OBSTFELD, GLOBAL CAPITAL MARKETS: INTEGRATION, CRISIS, AND GROWTH 41-71 (2004) (showing that, since the 1980s, global capital markets have experienced a sharp resurgence in the volume of cross-border capital flows and foreign asset holdings); and Esteban Ortiz-Ospina et al., *Trade and Globalization*, OUR WORLD IN DATA (2024), https://ourworldindata.org/trade-and-globalization (documenting the historical growth of trade and the deepening internationalization of production and distribution patterns, since the 19th century, alongside the rising global mobility of goods, capital, and services). *See also* Theodore Levitt, *The Globalization of Markets*, HARV. BUS. REV. (May, 1983), https://hbr.org/1983/05/the-globalization-of-markets (arguing that the gradual internationalization of markets compels companies to standardize products and strategies globally, fostering denationalization of firms and convergence of consumer preferences).

[9] *See* Philip McMichael, *Globalization: Myths and Realities*, 61 RURAL SOCIOL. 25, 27 (1996) ("globalization has become consequential by virtue of its institutional force within the state system, and from there it reaches out to subject populations. […] This dynamic is not simply a quantitative extension of commodity relations. It is, rather, a qualitative shift in the mode of social organization that marks a historic transition in the capitalist world order"); and JEFFRY A. FRIEDEN, GLOBAL CAPITALISM: ITS FALL AND RISE IN THE TWENTIETH CENTURY xvi-xvii (2006) ("[g]lobalization is still a choice, not a fact. It is a choice made by governments that consciously decide to reduce barriers to trade and investment, adopt new policies toward international money and finance, and chart fresh economic courses").

law occupies a central role. Rather than a single, unified global law, what emerges is a set of interconnected legal phenomena[10]—from the growing uniformization of private law, driven by global business practices, to deliberate efforts to shape domestic legal frameworks in specific areas, to expansion of transnational regulatory regimes.[11] The globalization of rules and their role in structuring global markets put legal systems in the center of any broader project of global integration.

Competition, as a key feature of markets and their governance,[12] also embodies this dynamic. If globalization has led firms and economies to compete in new forms and spaces,[13] policymakers have embedded the governance of competition—especially through competition policy—in this process.[14] Unsurprisingly, since the 1990s, national economies have increasingly established or reformed their competition policy regimes, driving an exponential expansion of such frameworks worldwide.[15] Beyond

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[10] *See* Martin Shapiro, *The Globalization of Law*, 1 IND. J. GLOB. LEG. STUD. 37, 38 (1993) ("[w]e speak of globalization of law in reference to a number of interrelated phenomena").

[11] *See id.*, at 37-60 (exploring vectors of legal globalization, including commercial law convergence, public law expansion, protective regulations like consumer and environmental law, and the growing role of lawyers and litigation in global governance); Sabino Cassese, *The Globalization of Law*, 37 N.Y.U. J. INT'L. L. & POL. 973, 978 (2005) (enumerating five forms of legal globalization—namely institutional transfers across states, application of global principles to national administrations, enforcement of shared principles by global courts, extension of national principles to the global sphere, and spillovers such as free trade promoting the rule of law); and Terence C. Halliday & Pavel Osinsky, *Globalization of Law*, 32 ANNU. REV. SOCIOL. 447, 460 (2006) ("[l]aw underwrites economic globalization [...] in statutory forms by efforts to harmonize laws that will facilitate global trade, in regulatory forms by a vast enterprise of constructing transnational regulatory regimes to constrain global business, and in judicial or dispute resolution forms by the proliferation of forums to resolve disputes that occur in global trading regimes").

[12] *See* Albert O. Hirschman, *Rival Interpretations of Market Society: Civilizing, Destructive, or Feeble?*, 20 J. ECON. LIT. 1463, 1470-4 (1982) (examining how, during the 19th century, the concept of competition evolved into a means of promoting empathy and fostering social ties among businesses and other stakeholders in the market economy).

[13] See Thomas Hatzichronoglou, *Globalisation and Competitiveness: Relevant Indicators* 3 (OECD Science, Technology and Industry Working Papers, No. 1996/05, 1996) ("[t]he economy's entry into its globalisation phase has radically altered the nature of competition. [...] This new competition has accentuated the interdependence of the different levels of globalisation (trade in goods and services, direct investment, technology transfers, capital movements), with direct investment becoming a central factor in the process of industrial restructuring and the development of genuine world industries").

[14] While debates on the internationalization of competition policy began in the 1960s and 1970s, the 1990s marked a turning point with more concrete developments and institutional initiatives. *See* Claus-Dieter Ehlermann, *The International Dimension of Competition Policy*, 17 FORDHAM INT'L. L.J. 833, 833 (1993).

[15] *See* Anu Bradford et al., *Competition Law Gone Global: Introducing the Comparative Competition Law and Enforcement Datasets*, 16 J. EMPIRICAL LEG. STUD. 411, 417 (2019).

this liberalization trend, the institutional features and substantive content of competition law regimes have converged across multiple dimensions.[16] For instance, international bodies such as the Organisation for Economic Co-operation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), and the International Competition Network (ICN) played a key role in promoting this convergence by convening national authorities, setting standards, and projecting normative influence.[17]

Yet, more recently, the globalization of competition policy has entered a qualitatively different phase. Fragmentation and institutional experimentalism have become more pronounced, as jurisdictions engage in diverse forms of collaboration, learning, and disputes to deal with increased uncertainty.[18] Rather than signaling a retreat from global engagement in competition policy, this shift reflects the complex nature of globalization itself. It unfolds not as a linear or uniform trajectory, but as a fluid and contested process, shaped by competing interests, institutional diversity, and shifting power relations.[19]

While several accounts have emphasized the international diffusion and apparent convergence of competition policy,[20] few have sought to map the distinct phases that define this evolving trajectory—especially the current inflection point in the global integration process.[21] This article addresses that

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[16] *See* Anu Bradford & Adam S. Chilton, *Competition Law Around the World from 1889 To 2010: The Competition Law Index*, 14 J. COMPETITION L. & ECON. 393, 411 (2018).

[17] *See infra* Section II.

[18] *See infra* Section III.

[19] Some studies have already proposed taxonomies to capture the different phases of globalization itself. *See*, *e.g.*, KEVIN H. O'ROURKE & JEFFREY G. WILLIAMSON, GLOBALIZATION AND HISTORY: THE EVOLUTION OF A NINETEENTH-CENTURY ATLANTIC ECONOMY (1999); Adam McKeown, *Periodizing Globalization*, 63 HIST. WORKSHOP J. 218 (2007); and Jan Nederveen Pieterse, *Periodizing Globalization: Histories of Globalization*, 6 NEW GLOB. STUD. 1 (2012). We find analogous efforts in legal scholarship. *See*, *e.g.*, Shapiro, *supra* note 10; Cassese, *supra* note 11, at 978-86; and Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850–2000*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 19 (David M. Trubek & Alvaro Santos eds., 2006).

[20] *See generally* D. Daniel Sokol, *Monopolists without Borders: The Institutional Challenge of International Antitrust in a Global Gilded Age*, 4 BERKELEY BUS. L.J. 37 (2007) (offering a comprehensive overview, literature review, and systematization of the international dynamics of competition policy—including the key institutional developments that shaped the field throughout the 1990s and 2000s).

[21] These analysis remain limited in tracing the evolution of an international dimension for competition policy, without identifying the drivers and actors advancing a project of global integration. *See*, *e.g.*, Alden F. Abbott, *The Globalization of Antitrust: History and Prospects*, MERCATUS CTR. (2021), https://www.mercatus.org/research/research-papers/globalization-antitrust; and Aakash Shah, *The Globalization of Antitrust Law: History and Future*, COMPETITION POL'Y INT'L (June 16, 2022),

gap by proposing an interpretation of the globalization of competition policy through three "waves": a *first wave* in the 1990s, led by the U.S. and embedded in the Washington Consensus, a *second wave* in the 2000s, driven by international networks promoting convergence through "best practices", and a *third wave*, which embodies the current phase marked by uncertainty, fragmentation, and institutional experimentation. In doing so, it highlights how the current phase marks not just a change in tools or priorities, but a deeper shift in the logic of global integration—moving away from diffusion and convergence toward a more experimental, pluralistic, and potentially democracy-enhancing model of global competition governance.

Naturally, our interpretation of this history adopts a necessarily stylized approach—each wave does not offer an all-encompassing narrative, as nuances and counterexamples inevitably arise. Nevertheless, identifying these specific phases of globalization yields three key contributions to the literature. First, it provides a more nuanced account of how competition policy has globalized over recent decades, highlighting both the diversity of elements that shape this process and the internal tensions it generates. Second, it enables us to trace the conflicting narratives about the meaning of competition policy globalization in each phase, along with their distinct drivers. Third, and most importantly, by mapping the historical roots of this process, this perspective frames the current challenges and opportunities that competition policy encounters in broader conflicts surrounding international integration in competition governance.

The remainder of the paper presents four sections. The first two analyze how U.S. leadership and international networks drove the early waves of competition policy globalization. The third examines the current phase and shows how uncertainty, fragmentation, and institutional experimentation are reshaping the terms of global engagement and opening space for alternative approaches. The final section outlines how global integration might evolve in this new context, pointing to possible directions for a more pluralistic and democracy-enhancing approach.

I. FIRST WAVE: U.S. LEADERSHIP AND THE SPREAD OF COMPETITION POLICY

The historical roots of modern competition policy begin in the U.S. with the enactment of the Sherman Act in 1890.[22] Yet, competition policy

https://www.competitionpolicyinternational.com/the-globalization-of-antitrust-law-history-and-future/.

[22] *See generally* RUDOLPH J. R. PERITZ, COMPETITION POLICY IN AMERICA: HISTORY, RHETORIC, LAW (2d ed., 2000); TIM WU, THE CURSE OF BIGNESS: ANTITRUST IN THE NEW GILDED AGE (2018); and HERBERT HOVENKAMP, FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE 69-103 (6th ed., 2020).

only encountered the broader forces of globalization nearly a century later, during the 1990s. This is not to suggest that other jurisdictions lacked their own competition regimes, nor that international dynamics had been entirely absent. On the contrary, several countries had long established competition policies,[23] and transnational influences had already shaped some of them, especially in the U.S.-Europe relationship post-World War II.[24] The 1990s, however, marked the emergence of a distinct dynamic of global integration, as competition policy expanded beyond national boundaries and acquired an intrinsic international dimension.

The economic transformations of the time further catalyzed broader trade liberalization, but a fundamental part of this process involved regulating the new dynamics of international market competition.[25] The globalization discourse of the 1990s extended beyond reforms in state participation and tariff reductions; it also encompassed domestic efforts to guarantee free market competition. Policymakers integrated competition policy into a broader set of measures designed to create synergies with trade liberalization.[26] Importantly, this liberalizing narrative also drew on the welfarist approach that had shaped competition policy since the 1970s. While the Chicago School emphasized efficiency as the central goal of competition

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[23] *See* Bradford et al., *supra* note 15, at 417 (indicating that a modest number of jurisdictions and competition laws existed worldwide before 1970).

[24] At that time, the U.S. played a key role in the expansion of competition policy in Europe, despite the preexisting ordoliberal tradition. *See* Brigitte Leucht & Mel Marquis, *American Influences on EEC Competition Law Two Paths, How Much Dependence?*, *in* THE HISTORICAL FOUNDATIONS OF EU COMPETITION LAW 126 (Kiran Klaus Patel & Heike Schweitzer eds., 2013) (finding that U.S. competition policy influenced European competition law primarily through epistemic exchanges and policy diffusion in DG IV and expert networks, although its impact was selectively adapted by European institutions to accommodate autonomous legal and economic frameworks). *See also* Brigitte Leucht, *Transatlantic Policy Networks in the Creation of the First European Anti-trust Law: Mediating Between American Anti-trust and German Ordo-Liberalism*, *in* THE HISTORY OF THE EUROPEAN UNION: ORIGINS OF A TRANS- AND SUPRANATIONAL POLITY 1950-72 56 (Wolfram Kaiser et al. eds., 2008).

[25] *See supra* note 13.

[26] *See* OECD, COMPETITION POLICY: 1994 WORKSHOP WITH THE DYNAMIC NON-MEMBER ECONOMIES (1994) ("[o]ne of the striking features of the last decade of economic reform in both OECD and non-OECD countries is the increased interest shown in competition policy as a means of improving economic performance. This policy emphasis is seen particularly in countries which have been moving from a centrally planned to a market economy where the adoption of competition laws, along with liberalisation of trade and investment, has been viewed as an important part of the reform process"); and WTO, I ANNUAL REPORT: SPECIAL TOPIC: TRADE AND COMPETITION POLICY 30 (1997) ("[t]here is a growing interest in the interface between trade and competition policy. This is partly explained by a perception that, as governmental trade measures are increasingly brought under multilateral discipline, enterprise practices that distort or restrain international trade are becoming more evident and may be relatively more important than before").

policy,[27] it equally promoted skepticism against state intervention, reinforcing the liberalization agenda.[28]

Additionally, practical aspects of economic integration also fueled the push to align competition policy globally. As mergers and acquisitions involving multinational business groups spread across multiple jurisdictions,[29] competition-related concerns extended beyond national borders, as exemplified by major global transactions like Glaxo/Wellcome (1995) and Ciba-Geigy/Sandoz (1996) in pharmaceuticals, Boeing/McDonnell Douglas (1996) in aviation, and Exxon/Mobil (1999) in the oil and derivatives industry. Multiple competition authorities scrutinized these mergers in parallel, prompting growing cooperation to assess global effects, coordinate remedies, and consider the broader implications of prohibitions.[30] Similarly, in the 1990s, authorities began to identify and sanction the first international cartels, underscoring that collusion among multinational companies was already shaping global markets. Antitrust

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[27] *See* ROBERT BORK, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF 51 (1993) ("(1) The only legitimate goal of American antitrust law is the maximization of consumer welfare; therefore, (2) 'Competition,' for the purposes of antitrust analysis, must be understood as a term of art signifying any state of affairs in which consumer welfare cannot be increased by judicial decree").

[28] *See* Mark Glick, *Antitrust and Economic History: The Historic Failure of the Chicago School of Antitrust*, 64 ANTITRUST BULL. 295, 318-9 (2019) (contending that different neoliberal narratives around the welfarist approach to competition policy—such as the Chicago School, Virginia Public Choice, and the Washington Consensus—converged in opposing the expansion of the state's role, especially in labor protections, social programs, public enterprises, and trade barriers).

[29] *See* Nam-Hoon Kang & Sara Johansson, *Cross-Border Mergers and Acquisitions: Their Role in Industrial Globalisation* 7 (OECD Science, Technology and Industry Working Papers No. 2000/01, 2000). Some observers also acknowledge the existence of a fifth merger wave with a distinctive global nature, spanning from the early 1990s to 2000. *See*, *e.g.*, Bernard S. Black, *The First International Merger Wave (and the Fifth and Last U.S. Wave)*, 54 U. MIAMI L. REV. 799, 800-1 (2000); and SUDI SUDARSANAM, CREATING VALUE FROM MERGERS AND ACQUISITIONS: THE CHALLENGES 16-9 (2003).

[30] *See* Roscoe B. Starek, III, *International Cooperation in Antitrust Enforcement*, U.S. FTC (Sep. 29, 1997), https://www.ftc.gov/news-events/news/speeches/international-cooperation-antitrust-enforcement-0 (expressing the need for greater international cooperation and convergence in competition policy amid the transformations in the globalized economy, with specific references to global merger cases assessed by different jurisdictions); Robert Pitofsky, *The Effect of Global Trade on United States Competition Law and Enforcement Policies*, U.S. FTC (Oct. 15, 1999), https://www.ftc.gov/news-events/news/speeches/effect-global-trade-united-states-competition-law-enforcement-policies ("[o]ne consequence of this level of cross-border activity is that mergers, joint ventures, distribution arrangements and other transactions that affect the interests of consumers in two or more (and sometimes as many as 10 or 12) nations have become commonplace"). *See also* OECD, MERGER CASES IN THE REAL WORLD: A STUDY OF MERGER CONTROL PROCEDURES (1994).

enforcement against these cartels further pushed deepened integration among national competition authorities and strengthened the perception that purely national approaches were insufficient to tackle cross-border collusion.[31]

This momentum fueled the first wave of competition policy globalization. As the liberalizing narrative of the 1990s established a welcoming framework for the first global integration of competition policy, the U.S. emerged as the key driver in promoting competition rules in global markets.[32] This leadership comes as no surprise, given that the U.S. also spearheaded the wider liberalization agenda of the 1990s globalization under the Washington Consensus.[33] Competition stood as a cross-cutting principle in this agenda, which also included privatization and regulatory reform, with policymakers in many jurisdictions seeking to open domestic markets to foreign participation.[34] As a result, the first wave of globalization led to rapid adoption of competition policy regimes worldwide, roughly doubling the number of jurisdictions with competition authorities during the 1990s,[35] especially in developing countries.[36]

Several initiatives underscore the U.S. leadership in the first wave of competition policy globalization. A key example was the creation of the International Competition Policy Advisory Committee (ICPAC) in 1997. At its launch, Attorney General Reno emphasized the committee's mission to "enhance international cooperation among competition enforcement authorities and to remove unwarranted barriers to international trade," while noting that "[t]he U.S. economy has become increasingly globalized and its continued health depends in large measure on ensuring free and fair access to international markets."[37] ICPAC's recommendations directly encouraged the

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[31] *See* WTO, *supra* note 26, at 40 ("[w]hile the extent of cartel activities is intrinsically difficult to assess [...], there are some indications that a growing proportion of cartel agreements are international in scope"). *See also* Simon J. Evenett et al., *International Cartel Enforcement: Lessons from the 1990s*, 24 WORLD ECON. 1221 (2001).

[32] *See* JOHN BRAITHWAITE & PETER DRAHOS, GLOBAL BUSINESS REGULATION 185-9 (2000) (arguing that competition policy had driven the international expansion of the U.S. model of competitive mega-corporate capitalism).

[33] *See* John Williamson, *What Washington Means by Policy Reform*, PIEE (Nov. 1, 2002), https://www.piie.com/commentary/speeches-papers/what-washington-means-policy-reform (setting the core reform agenda of what was "regarded in Washington as the desirable set of economic policy reforms"). *See also* John Williamson, *The Strange History of the Washington Consensus*, 27 J. POST KEYNESIAN ECON. 195 (2004); and John Williamson, *A Short History of the Washington Consensus*, 15 L. & BUS. REV. AM. 7 (2009).

[34] *See Williamson*, supra note 33 (signaling competition policy as a desirable mechanism for expanding the Washington Consensus agenda).

[35] *See* Bradford et al., *supra* note 15, at 417.

[36] *See* DAVID J. GERBER, GLOBAL COMPETITION: LAW, MARKETS, AND GLOBALIZATION 241-6 (2010); and Dina I. Waked, *Adoption of Antitrust Laws in Developing Countries: Reasons and Challenges*, 12 J. L. ECON. & POL'Y. 193, 198-203 (2016).

[37] Janet Reno, *Remarks As Prepared Regarding The International Competition Policy*

convergence of merger review standards[38] and the strengthening of cooperation in cartel enforcement,[39] influencing competition policy reforms abroad and reinforcing the globalization of competition policy.[40] Beyond rhetoric, the U.S. advanced this agenda through multiple strategies, including the establishment of competition policy provisions in trade agreements starting with NAFTA in 1994,[41] and USAID funding of technical assistance to support competition policy in countries with new agencies.[42]

Additionally, the U.S. firmly positioned itself as the leading reference for competition policy enforcement standards. This was particularly evident in cartel enforcement: the U.S. DOJ uncovered and sanctioned the lysine cartel following its 1993 leniency program reform, making the case emblematic.[43] Building on this success, the U.S. actively projected its enforcement leadership against international cartels.[44] In 1999, the DOJ hosted the first International Cartel Enforcement Workshop, bringing together authorities from various jurisdictions to showcase the achievements of its leniency program and enforcement strategies.[45] These initiatives

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Advisory Committee, U.S. DOJ (Nov. 24, 1997), https://www.justice.gov/atr/remarks-prepared-regarding-international-competition-policy-advisory-committee. *See also* Merit E. Janow & Cynthia R. Lewis, *International Antitrust and the Global Economy: Perspectives on The Final Report and Recommendations of the International Competition Policy Advisory Committee to the Attorney General and the Assistant Attorney General for Antitrust*, 24 WORLD COMPETITION 3 (2001).

[38] *See* ICPAC, FINAL REPORT 41-163 (2000).

[39] *See id.*, at 163-200.

[40] *See* CHRISTOPHER TOWNLEY ET AL., THE LAW AND POLITICS OF GLOBAL COMPETITION: INFLUENCE AND LEGITIMACY IN THE INTERNATIONAL COMPETITION NETWORK 6-7 (2022).

[41] *See* North American Free Trade Agreement art. 1501, Dec. 17, 1992, 32 I.L.M. 289, 697 (1993).

[42] *See* Alden F. Abbott, *Competition Policy and Its Convergence as Key Drivers of Economic Development*, 28 MISS. C. L. REV. 37, 45 (2009).

[43] *See Former Top ADM Executives, Japanese Executive, Indicted in Lysine Price Fixing Conspiracy*, U.S. DOJ, (Dec. 3, 1996), https://www.justice.gov/archive/atr/public/press_releases/1996/1030.htm. *See also* John M. Connor, *"Our Customers Are Our Enemies": The Lysine Cartel of 1992-1995*, 18 REV. IND. ORGAN. 5 (2001).

[44] *See* Scott D. Hammond, *A Review of Recent Cases and Developments in the Antitrust Division's Criminal Enforcement Program*, U.S. DOJ (Mar. 7, 2002), https://www.justice.gov/atr/status-report-corporate-leniency-program (providing a historical record of these international cartel cases).

[45] *See* Joel I. Klein, *The War Against International Cartels: Lessons From The Battlefront*, U.S. DOJ (Oct. 14, 1999), https://www.justice.gov/atr/speech/war-against-international-cartels-lessons-battlefront ("the Antitrust Division hosted a two-day International Cartel Enforcement Workshop in Washington for our own senior anti-cartel litigators and nearly 50 anti-cartel enforcers from nearly 30 other jurisdictions on six continents. The subjects discussed ranged from leniency policies, to investigatory and

fostered the global spread of leniency programs and collaboration mechanisms for cartel investigations, which many jurisdictions adopted in subsequent years.[46] A similar dynamic occurred in merger enforcement. In 1996, William J. Baer emphasized that the Hart-Scott-Rodino Antitrust Improvements Act of 1976 "has dramatically changed the way the antitrust agencies conduct merger enforcement, and both consumers and the business community have benefited," deeming it "essential for antitrust to keep pace with our dynamic economy."[47] This leadership helped drive the convergence of merger control practices, particularly through the adoption of pre-merger notification regimes worldwide.[48]

While U.S. prominence in shaping competition policy during this period is undeniable, it did not suppress rival influences in the global arena. The EU, for example, had long positioned competition policy as a pillar of its economic governance, embedding it in the constitutive treaties and building a comprehensive regulatory framework for the European common market[49]—thereby asserting its own sphere of influence. Evidence indicates that the 1990s marked a turning point, when the EU model began to surpass the U.S. approach as the primary reference for countries establishing or reforming their competition policies.[50] This outcome, much like the U.S. strategy, was not incidental: it stemmed both from deliberate EU efforts—such as the incorporation of competition clauses in trade and association agreements[51]—and from the intrinsic appeal of the EU model itself, which offered a detailed, administratively enforceable framework capable of

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prosecutorial mechanisms and policies, to cooperation among antitrust agencies in cartel cases, to methods of building an anti-cartel enforcement program; the panelists represented over a dozen different enforcement agencies").

[46] *See* Scott D. Hammond, *The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades*, U.S. DOJ (Feb. 25, 2010), https://www.justice.gov/d9/atr/speeches/attachments/2015/06/25/the_evolution_of_criminal_antitrust_enforcement_over_the_last_two_decades.pdf (indicating that between the mid-1990s and 2010, more than 50 jurisdictions implemented antitrust leniency programs). *See also* Joan-Ramon Borrell et al., *25 Years of Leniency Programs: A Turning Point in Cartel Prosecution*, 1 COMPETITION POL'Y INT'L ANTITRUST CHRON. 42 (2019).

[47] William J. Baer, *Reflections on 20 Years of Merger Enforcement under the Hart-Scott-Rodino Act*, U.S. FTC (Oct. 31, 1996), https://www.ftc.gov/news-events/news/speeches/reflections-20-years-merger-enforcement-under-hart-scott-rodino-act.

[48] *See* Bradford & Chilton, *supra* note 16, at 412-4.

[49] *See* Claus-Dieter Ehlermann, *The Contribution of EC Competition Policy to the Single Market*, 29 COMMON MKT. L. REV. 257, 257 (1992).

[50] *See* Anu Bradford et al., *The Global Dominance of European Competition Law Over American Antitrust Law*, 16 J. EMPIRICAL LEG. STUD. 731, 741-54 (2019) (finding that, since the 1990s, most countries have adopted competition laws that more closely resemble the EU model than the U.S. regime, both in substantive provisions and statutory language).

[51] *See id.*, at 755-6.

accommodating multiple policy objectives beyond efficiency.[52]

Nevertheless, this does not undermine U.S. leadership in the first wave of competition policy globalization for several reasons. First, even when many jurisdictions adopted regulatory models that mirrored the European framework, the U.S. was still a key driver of the narrative of the first wave. As mentioned above, through agencies like USAID, the U.S. trained and provided technical assistance to other authorities, shaped the expertise that guided the design of new competition regimes, and promoted competition policy as part of the broader liberalization agenda in the 1990s. Second, many jurisdictions, even those that adopted European-style frameworks, applied enforcement principles rooted in the U.S. experience, particularly the Chicago School legacy and the neoclassical approach to competition policy.[53] Finally, European competition policy itself became increasingly aligned with U.S. standards during this period.[54] Commissioner Mario Monti (1999–2004), for example, advocated for a "more economic approach"[55] that brought the European Commission closer to U.S. antitrust thinking.[56]

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[52] *See id.* 757-60.

[53] *See* ICN, REPORT ON THE OBJECTIVES OF UNILATERAL CONDUCT LAWS, ASSESSMENT OF DOMINANCE/SUBSTANTIAL MARKET POWER, AND STATE-CREATED MONOPOLIES 9 (2007) ("[t]hirty of the thirty-three respondents that addressed the questions on objectives state that their unilateral conduct rules aim to promote consumer welfare"); and ICN, COMPETITION ENFORCEMENT AND CONSUMER WELFARE: SETTING THE AGENDA 3 (2011) ("[e]nforcers of competition law often refer to the importance of promoting consumer welfare through the application of competition law. […] [M]any Authorities carry out their enforcement duties on the presumption that ensuring the maintenance of competition in markets will ultimately benefit consumer welfare").

[54] Importantly, this later alignment added to the U.S.'s initial influence on the post-war design of European competition law. *See supra* note 24.

[55] *See generally* Valentine Korah, *From Legal Form toward Economic Efficiency—Article 85(1) of the EEC Treaty in Contrast of U.S. Antitrust*, 35 ANTITRUST BULL. 1009 (1990); Lars-Hendrik Röller, *Economic Analysis and Competition Policy Enforcement in Europe*, *in* MODELLING EUROPEAN MERGERS: THEORY, COMPETITION POLICY AND CASE STUDIES 11 (Peter A. G. Bergeijk & Erik Kloosterhuis eds., 2006); THE MORE ECONOMIC APPROACH TO EUROPEAN COMPETITION LAW (Dieter Schmidtchen et al. eds., 2007); COMPETITION POLICY AND THE ECONOMIC APPROACH: FOUNDATIONS AND LIMITATIONS (Josef Drexl et al. eds., 2011); and ANNE C. WITT, THE MORE ECONOMIC APPROACH TO EU ANTITRUST LAW (2016).

[56] In 2001, Monti openly recognized that "[t]he influence of US antitrust law was profound during the early years of the development of competition policy in Europe and has continued ever since," affirming while noting the aspiration to share common foals "on both sides of the Atlantic." These shared objectives, Monti emphasized, anchored competition policy in "sound economics" and prioritized "the protection of consumer interest as its primary concern." (Mario Monti, *Antitrust in the US and Europe: a History of convergence*, EC (Nov. 15, 2001), https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_01_540/SPEECH_01_540_EN.pdf).

Hence, U.S. leadership in the first wave of competition policy globalization coexisted with institutional variation. Rather than merely replicating the U.S. model, many jurisdictions adopted hybrid frameworks but converged on U.S.-inspired enforcement priorities and the broader narrative of constructing a global integration project for competition policy. Brazil offers a clear example of this dynamic. Although its competition policy dates back to the 1940s and reflects constitutional influences like the "popular economy" and the "constitutional economic order,"[57] it underwent deep reforms in the 1990s. These reforms reflected greater textual alignment with the European model than with the U.S. approach. For instance, Brazilian legislation adopted the "abuse of dominant position" standard in Law No. 8,884/1994,[58] which echoed the former Article 82 of the EC Treaty,[59] taking some distance from the wording of monopolization and attempt to monopolize used in Section 2 of the Sherman Act.[60] Nevertheless, the anchoring narrative of antitrust reform and enforcement increasingly reflected U.S. influence, particularly under the Washington Consensus.[61]

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[57] *See generally* MACHADO CABRAL, A CONSTRUÇÃO DO ANTITRUSTE NO BRASIL: 1930-1964 (2020); Arthur Sadami & Mateus Bernardes dos Santos, *When Polanyi Met Competition Policy: Market Fundamentalism, Crisis, and Reform in the 21st Century*, J. COMPETITION L. & ECON. 316, 334-6 (2024); and José Augusto Medeiros, *Antitrust Under the Popular Economy: The Birth of the Antitrust Law in Brazil*, 12 J. ANTITRUST ENF'T. 549 (2024). Importantly, U.S. antitrust practice also influenced the drafting and enactment of Brazil's first competition law in the 1940s. *See* Cabral, *supra* note 57, at 115, 120 and 164.

[58] Lei No. 8.884, de 11 de Junho de 1994, art. 20, IV, Diário Oficial da União [D.O.U.] de 13.6.1994 (Braz.). The current Brazilian Competition Act, Law No. 12,529/2011, also incorporates this provision. *See* Lei No. 12.529, de 30 de novembro de 2011, art. 36, IV, Diário Oficial da União [D.O.U.] de 1.12.2011, retificado em 2.12.2011 (Braz.).

[59] Consolidated Version of the Treaty Establishing the European Community Article 82, Dec. 24, 2002, 2002 O.J. (C 325) 64.

[60] 15 U.S.C. § 2 (2018).

[61] *See* Eduardo Pontual Ribeiro et al., *Antitrust and Competition Policy in Brazil*, *in* THE OXFORD HANDBOOK OF THE BRAZILIAN ECONOMY 718, 720 (Edmund Amann et al. eds., 2018) ("[i]t was only in the 1990s that modern antitrust legislation was passed in Brazil. Its inception was accompanied by economic changes such as the deregulation of the economy, phasing out of price controls in many sectors, the sale of state-owned enterprises (SOE), and the breakup of SOE monopolies"). *See also* IAGÊ ZENDRON MIOLA, LAW AND THE ECONOMY IN NEOLIBERALISM: THE POLITICS OF COMPETITION REGULATION IN BRAZIL (2014) (examining how Brazil's 1990s antitrust reform institutionalized neoliberal governance via competition policy, under strong U.S. influence and technical assistance, despite political resistance and developmentalist legacies). During this period, the Brazilian competition authority actively developed guidance—such as the *Guidelines for the Analysis of Economic Aspects of Horizontal Concentration Acts* (2001) and the *Guidelines for the Economic Analysis of Predatory Pricing Practices* (2002), issued under SEAE/SDE Joint Ordinance No. 50/2001—drawing clear influence from the methodologies that prevailed in the U.S. at the time. *See* Portaria Conjunta SEAE/SDE No. 50, de 1 de Agosto de 2001, Diário Oficial da União [D.O.U.] de 17.8.2001 (Braz.).

This convergence, described by scholars and policymakers as the "Brazilian Antitrust Revolution," unfolded in explicit dialogue with the "Chicago Antitrust Revolution."[62]

Overall, the first modern experience of competition policy globalization unfolded under U.S. leadership, propelled by the broader liberalization agenda of the Washington Consensus and anchored in efforts to disseminate institutional models, enforcement standards, and policy frameworks—especially to jurisdictions that were creating or reforming their regimes. Through trade agreements, technical assistance, and the promotion of enforcement tools, the U.S. positioned itself as the primary global reference for shaping competition governance. This leadership, however, did not produce uniform institutional emulation: rather, U.S. influence spread through the diffusion of enforcement paradigms and liberalization narratives, while countries selectively adapted legal models—especially from the EU—to align with their domestic legal traditions and policy priorities.[63]

This initial dominance, while not exclusive, ultimately proved transient. Although the 1990s witnessed an alignment of European practices with U.S. standards, the EU gradually asserted a more autonomous and extraterritorial role, steadily extending its influence beyond its borders. A defining moment in this divergence was the General Electric/Honeywell merger case in 2001, where the transaction was cleared in the U.S. but blocked by the European Commission—despite cooperation between authorities.[64] This controversy crystallized the drift between the two regulatory centers and marked the rise of an effective transatlantic rivalry in shaping global competition policy. The EU's emergence as a regulatory

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[62] *See*, *e.g.*, César Mattos, *Introdução*, *in* A REVOLUÇÃO DO ANTITRUSTE NO BRASIL: A TEORIA ECONÔMICA APLICADA A CASOS CONCRETOS 19 (César Mattos ed., 2003); and César Mattos, *Introdução*, *in* A REVOLUÇÃO DO ANTITRUSTE NO BRASIL: A ERA DOS CARTÉIS 13 (César Mattos ed., 2018). *See also* Mário André Machado Cabral, *Houve uma "Revolução do Antitruste" no Brasil?*, *in* EVOLUÇÃO DO ANTITRUSTE NO BRASIL 119 (Celso Campilongo & Roberto Pfeiffer eds., 2018) (analyzing the "Brazilian Antitrust Revolution" in the broader context of liberalizing reforms).

[63] Notably, the legal transplants scholarship underscores that host jurisdictions invariably reshape foreign legal models to fit their cultural, historical, and institutional contexts. *See*, *e.g.*, Alan Watson, *From Legal Transplants to Legal Formants*, 43 AM. J. COMP. L. 469 (1995); and Pierre Legrand, *The Impossibility of "Legal Transplants"*, 4 MAASTRICHT J. EUR. & COMP. L. 111 (1997).

[64] *See* Case COMP/M.2220—*General Electric/Honeywell, Comm'n Decision*, 2004 O.J. (L 48) 1. Observers have highlighted a trauma of the General Electric/Honeywell case and the challenges it posed for the standardization of global competition law. *See*, *e.g.*, Malcolm MacLaren, *The GE/Honeywell Merger Case: Reaching the Limits of International Competition Policymaking*, 2 GER. L.J. 20 (2001); and Kyle Robertson, *One Law to Control Them All: International Merger Analysis in the Wake of GE/Honeywell*, 31 B.C. INT'L. & COMP. L. REV. 153 (2008).

counterweight prompted other jurisdictions to reassess their positions in the project of global competition policy integration, fostering a more multipolar configuration that gradually redefined the prospects for global convergence. The next wave would then cut across this rivalry and draw from commonalities of more mature jurisdictions to bring together a broader project of convergence of competition policy.

II. SECOND WAVE: INTERNATIONAL NETWORKS AND "BEST PRACTICES" FOR COMPETITION POLICY

International networks have been a key driver of globalization and perhaps one of its clearest examples of how governance has transitioned toward a global dimension. Although some networks predate the globalization movements of recent decades (e.g. OECD and UNCTAD), the expansion of transnational economic flows and the pressures for coordinated regulatory responses profoundly reshaped their role.[65] They foster globalization by diffusing norms, standards, and "best practices" that harmonize policies across national systems, thereby reducing barriers to trade and investment.[66] These networks also create, reinforce, and draw on epistemic communities that shape the global regulatory agenda and foster cross-border knowledge exchange.[67] Participation in these networks also

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[65] *See* Alexander E. Kentikelenis & Sarah Babb, *The Making of Neoliberal Globalization: Norm Substitution and the Politics of Clandestine Institutional Change*, 124 AM. J. SOC. 1720, 1730-47 (2019) (exploring how the rise of neoliberal globalization triggered clandestine reform processes in international institutions such as the International Monetary Fund). *See also* Devesh Kapur, *Processes of Change in International Organizations*, *in* GOVERNING GLOBALIZATION: ISSUES AND INSTITUTIONS 334 (Deepak Nayyar ed., 2002) (exploring how changes in the global political economy—especially since the 1990s—have shaped the trajectories of international organizations, as they adapt to structural shocks, shifting norms, and growing competition under path-dependent institutional constraints).

[66] *See* Susan Park, *Norm Diffusion Within International Organizations: A Case Study of the World Bank*, 8 J. INT'L REL. & DEV. 111, 112-3 (2005). *See also* MARTHA FINNEMORE, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY (1996) (offering a constructivist account of the role international organizations play in advancing global governance by actively diffusing normative frameworks and standards).

[67] *See* ERNST B. HAAS, WHEN KNOWLEDGE IS POWER: THREE MODELS OF CHANGE IN INTERNATIONAL ORGANIZATIONS 40-6 (1990); Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT'L ORG. 1, 20-34 (1992); and Emanuel Adler & Peter M. Haas, *Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program*, 46 INT'L ORG. 367, 371-5 (1992); PERTTI ALASUUTARI, THE SYNCHRONIZATION OF NATIONAL POLICIES: ETHNOGRAPHY OF THE GLOBAL TRIBE OF MODERNS (2016); and Peter Haas, *Epistemic Communities*, *in* THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 698, 701-6 (Lavanya Rajamani & Jacqueline Peel eds., 2d ed, 2021). *See also* DAVID KENNEDY, A WORLD OF

confers prestige on both states and individual experts, reinforcing their influence in global governance arenas and elevating their standing in domestic policy debates.[68]

International networks for competition policy are not new. For instance, the OECD, founded in 1961, has hosted the Competition Law and Policy Committee (CLPC) since its inception, having issued competition policy recommendations as early as 1967.[69] Similarly, UNCTAD, founded in 1964, developed guidelines on competition policy in the 1970s and 1980s, although with limited practical impact on national enforcement regimes.[70] Nevertheless, it was only after the transatlantic tensions crystallized by the General Electric/Honeywell merger in 2001 that the global integration project in competition policy decisively shifted away from more unilateral approaches.

In a second wave of globalization, international networks assumed a central role in advancing the global integration of competition policy by promoting the dissemination of "best practices" and fostering convergence.[71] This phase emerged in a markedly different landscape from the first wave:

STRUGGLE: HOW POWER, LAW, AND EXPERTISE SHAPE GLOBAL POLITICAL ECONOMY (2016) (exploring the role of legal epistemic communities in shaping global policy).

[68] *See* Marjaana Rautalin et al., *International Organizations Establishing Their Scientific Authority: Periodizing the Legitimation of Policy Advice by the OECD*, 36 INT'L SOC. 3, 7 (2021) ("[b]orrowing the prestige of IOs is useful in affecting others' views because they represent a large body of members and a set of collectively agreed ideals and principles. Actors seeking to influence domestic policies take part in the IOs' activities and refer to their policy prescriptions since they believe that the authority of these bodies will further their policy interests"). *See also* Emilie M. Hafner-Burton & Alexander H. Montgomery, *Power Positions: International Organizations, Social Networks, and Conflict*, 50 J. CONFLICT RESOL. 3 (2006) (analyzing prestige dynamics in international organizational networks and finding that greater disparities reduce conflict by clarifying hierarchies and limiting peer competition).

[69] *See*, *e.g.*, OECD, Recommendation of the Council Concerning Co-operation Between Member Countries on Restrictive Business Practices Affecting International Trade, OECD/LEGAL/0082 (Oct. 5, 1967), abrogated by OECD/LEGAL/0180 (Sep. 25, 1979), https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0082.

[70] See Diane P. Wood, *The Impossible Dream: Real International Antitrust*, U. CHI. LEGAL F. 277, 285-7 (1992); John H. Shenefield, *Coherence or Confusion: The Future of the Global Antitrust Conversation*, 49 ANTITRUST BULL. 385, 391 (2004); and Ioannis Lianos, *The Contribution of the United Nations to the Emergence of Global Antitrust Law*, 15 TUL. J. INT'L. & COMP. L. 1, 7-10 (2007).

[71] *See* Hugh M. Hollman & William E. Kovacic, *The International Competition Network: Its Past, Current and Future Role*, 20 MINN. J. INT'L L. 274, 286 (2011). *See also* William E. Kovacic, *Competition Policy in the European Union and the United States: Convergence or Divergence?*, *in* COMPETITION POLICY IN THE EU: FIFTY YEARS ON FROM THE TREATY 314, 321 (Xavier Vives ed., 2009) (despite framing competition policy as a work in progress, acknowledging "a tendency to speak of convergence upon 'best' practices" around international networks).

whereas the initial push focused on spreading competition regimes to new jurisdictions, with minimum enforcement priorities, the second wave unfolded in a world where most countries had already established their own frameworks. However, despite shared principles inherited from the liberalization agenda of the 1990s, significant divergences in enforcement standards and substantive criteria remained in the 2000s. Bridging these gaps became the central objective during this second wave. To that end, longstanding institutions such as the OECD and UNCTAD, as well as new platforms like the ICN, positioned themselves as key actors. By leveraging their legitimacy, technical expertise, and convening power, these networks sought to align enforcement practices across jurisdictions and shape a more cohesive global competition policy landscape.

This is not to suggest that the international networks during the 2000s constituted representative or symmetrical forums among jurisdictions. On the contrary, they often mirrored the influence of dominant actors,[72] particularly the U.S. and the EU, which shaped their agendas and trajectories, frequently sidelining jurisdictions beyond their immediate spheres of influence.[73] These networks also did not perform identical functions during the second wave of globalization of competition policy but instead played complementary roles. For example, the OECD positioned itself as the primary hub for technical content and standard-setting, while the ICN and UNCTAD functioned more effectively as platforms for communication and the dissemination of "best practices," notably by incorporating a broader range of competition authorities and non-governmental advisors (NGAs) into their discussions.[74]

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[72] For example, the U.S. actively structured and shaped the operation of the ICN. *See Chairman Timothy J. Muris Promotes Effective Competition Advocacy at International Competition Network Conference in Naples, Italy*, U.S. FTC (Sep. 30, 2002), https://www.ftc.gov/news-events/news/press-releases/2002/09/chairman-timothy-j-muris-promotes-effective-competition-advocacy-international-competition-network; Margarida Matos Rosa, *The ICN at 20 - Looking Ahead*, *in* THE INTERNATIONAL COMPETITION NETWORK AT TEN: ORIGINS, ACCOMPLISHMENTS AND ASPIRATIONS 225, 225-8 (Paul Lugard ed., 2011); and Townley et al., *supra* note 40, at 6-7. Likewise, the EU took an active role in promoting a multilateral forum for competition policy centered around the WTO. *See* David J. Gerber, *The U.S. – European Conflict Over the Globalization of Antitrust Law: A Legal Experience Perspective*, 34 NEW ENG. L. REV. 123, 127-30 (1999); and David J. Gerber, *Competition Law and the WTO: Rethinking the Relationship*, 10 J. INT'L ECON. L. 707, 710 (2007).

[73] *See* Townley et al., *supra* note 40, at 62-87 (discussing the asymmetry of participation among competition authorities in the ICN and its impact on the representativeness of national interests). China became a striking example of a jurisdiction absent from these networks, particularly the ICN and the OECD. *See* Ioannis Lianos, *Global Governance of Antitrust and the Need for a BRICS Joint Research Platform in Competition Law and Policy*, *in* COMPETITION POLICY FOR THE NEW ERA: INSIGHTS FROM THE BRICS COUNTRIES 51, 69 (Tembinkosi Bonakele et al. eds., 2017).

[74] *See* Hollman & Kovacic, *supra* note 71, at 287-8.

Nevertheless, despite variations across experiences, two main patterns defined the role of international networks during the second wave of competition policy globalization. First, these networks consolidated their authority by producing official documents—such as guidelines, recommendations, and reports—through structured channels, positioning themselves as key reference points for institutional reform. By conducting assessments of national regimes (e.g. through "peer review" processes) and promoting "best practices," they contributed to the alignment of domestic policies with emerging international standards. Second, these networks became important hubs for the theoretical development of competition policy, fostering dialogue among scholars, authorities, and practitioners. This illustrates how the growing technocratic bias in competition policy[75] acquired a global dimension, with these networks translating evolving epistemological frameworks into an international theoretical consensus. Many competition authorities, in turn, sought to enhance their international reputation by aligning their practices with the standards and recommendations advanced in these global fora, reinforcing the influence of such networks on national policy trajectories. At least four institutions came to epitomize the second wave of competition policy globalization: the OECD, UNCTAD, the WTO (for a limited period), and the ICN.

Although the OECD had created its CLPC in the 1960s, its influence remained limited during the first wave of competition policy globalization due to the dominant U.S. role in the first wave and the organization's restricted membership, which excluded much of the Global South.[76] From the 2000s onwards, however, the OECD expanded its influence,[77] with its Competition Committee issuing recommendations on a broader array of topics adopted by both OECD and non-OECD countries.[78] It also formalized

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[75] *See* Daniel A. Crane, *Technocracy and Antitrust*, 86 TEX. L. REV. 1159, 1165-81 (2008); DANIEL A. CRANE, THE INSTITUTIONAL STRUCTURE OF ANTITRUST ENFORCEMENT 69-90 (2011); and Filippo Lancieri et al., *The Political Economy of the Decline of Antitrust Enforcement in the United States*, 85 ANTITRUST L.J. 441, 446-50 (2023).

[76] *See* Braithwaite & Drahos, *supra* note 32, at 189-90.

[77] *See* Sokol, *supra* note 20, at 97-102; Hollman & Kovacic, *supra* note 71, at 289-95; and Eleanor M. Fox & Amedeo Arena, *The International Institutions of Competition Law: The Systems' Norms*, *in* THE DESIGN OF COMPETITION LAW INSTITUTIONS: GLOBAL NORMS, LOCAL CHOICES 444, 477-9 (Eleanor M. Fox & Michael J. Trebilcock eds., 2013).

[78] *See*, *e.g.*, OECD, Recommendation of the Council on Merger Review, OECD/LEGAL/0333 (Mar. 23, 2005) (as amended June 4, 2025), https://legalinstruments.oecd.org/en/instruments?typeIds=2&committeeIds=1673&mode=advanced; OECD, Recommendation of the Council concerning Structural Separation in Regulated Industries, OECD/LEGAL/0310 (Apr. 26, 2001) (as amended Feb. 23, 2016), https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0333; and OECD, Recommendation of the Council on Competition Assessment, OECD/LEGAL/0376 (Oct. 22, 2009) (abrogated Dec. 11, 2019),

its knowledge production through background notes that became key technical references[79] and inaugurated the Global Forum on Competition in 2001 to engage non-member countries more directly.[80] Complementing these initiatives, the OECD's peer review system subjected national competition policies to external evaluations by experts from other jurisdictions, culminating in reports that offered tailored recommendations.[81]

UNCTAD underwent a comparable transformation during the second wave of competition policy globalization. Since the 2000s, it progressively gained greater relevance in the global integration of competition policy. With universal membership under the UN framework, UNCTAD became a central platform for capacity building in developing countries seeking to adopt, reform or consolidate competition policy regimes.[82] UNCTAD fulfilled this role by implementing technical assistance programs,[83] conducting over 500 voluntary peer reviews of national competition systems,[84] and publishing the

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https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0376.

[79] Since 1995, there has been a structured repository of discussions in these roundtables. *See Best Practice Roundtables on Competition Policy*, OECD, https://web.archive.org/web/20240229193631/https://www.oecd.org/competition/roundtables.htm.

[80] *See Global Forum on Competition*, OECD, https://www.oecd.org/en/networks/global-forum-on-competition.html. *See also* Terry Winslow, *The OECD's Global Forum on Competition and Other Activities*, 16 ANTITRUST MAGAZINE 38, 39 (2001).

[81] *See* OECD, *Competition Law and Policy Reviews*, OECDiLIBRAY, https://www.oecd-ilibrary.org/governance/competition-law-and-policy-reviews_22209158/dateasc ("[t]he reports, which typically incorporate recommendations for changes in government policy, quickly become part of national public debate, as they are closely analysed by government, the media and other influential commentators"). For instance, the OECD's engagement with Brazil illustrates this mechanism, with at least eight peer review reports over the past two decades critically evaluating and shaping the country's competition framework through concrete reform suggestions based on international "best practices". *See Brazil - Competition Law and Policy*, OECD, https://www.oecd.org/daf/competition/brazil-competition.htm.

[82] *See* Sokol, *supra* note 20, at 102-5; Hollman & Kovacic, *supra* note 71, at 295-99; and Fox & Arena, *supra* note 77, at 479-81. *See also* Lianos, *supra* note 70.

[83] *See*, *e.g.*, *Course on Competition Law Enforcement*, UNCTAD (Mar. 26, 2012), https://unctad.org/meeting/course-competition-law-enforcement; *Training Workshops on Competition Law and Policy for Judges and Prosecutors for the Costa Rican Supreme Court*, UNCTAD (Nov. 11, 2013), https://unctad.org/meeting/training-workshops-competition-law-and-policy-judges-and-prosecutors-costa-rican-supreme; and *Training workshop on Competition Laws and Policy for Staff of The Trade Practice and Consumer Protection Authority, Ethiopia*, UNCTAD (June 13, 2016), https://unctad.org/meeting/training-workshop-competition-laws-and-policy-staff-trade-practice-and-consumer-protection.

[84] *See Voluntary Peer Review of Competition Law and Policy*, UNCTAD, https://unctad.org/topic/competition-and-consumer-protection/voluntary-peer-review-of-competition-law-and-policy. *See also* LILIT V. MELIKYAN, EXTERNAL EVALUATION OF UNCTAD PEER REVIEWS ON COMPETITION POLICY 13-35 (2015) (finding that UNCTAD's peer reviews on competition policy shaped institutional trajectories and reform efforts in

Model Law on Competition to offer practical guidance for drafting and reforming legislation.[85] The periodic meetings of the Intergovernmental Group of Experts on Competition Law and Policy further strengthened cooperation and facilitated experience sharing among countries often excluded from the OECD or ICN networks.[86] Although UNCTAD's soft law instruments lacked the influence of OECD recommendations, its targeted support and enduring focus on development priorities gave it a distinct and lasting role in advancing the institutionalization of competition policy in the Global South.

Discussions to transform the WTO into an international platform for competition policy began in 1995, when EU Commissioner Karel van Miert (1993-1999) proposed creating a technical group to develop recommendations.[87] This led to the establishment of the Working Group on the Interaction between Trade and Competition Policy at the WTO in 1996, which published several reports between 1998 and 2001,[88] raising hopes for a future multilateral framework.[89] The Doha Ministerial Declaration of 2001 endorsed the group's continuation, but attempts to advance negotiations ultimately failed at the 2003 Cancún Ministerial Conference, leading to the group's disbandment in 2004.[90] The failure stemmed from multiple factors,

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several developing countries, though their influence varied depending on local political, financial, and administrative conditions).

[85] *See* UNCTAD, THE UNCTAD MODEL LAW ON COMPETITION AFTER 30 YEARS: SOME REFLECTIONS 1 (2024) ("[t]estimonials from young competition authorities from developing countries share the relevance of the Model Law in the drafting of their own competition laws and refer to the implications of the Model Law to developing countries"). While the Model Law undergoes constant revision and discussion, core parts have remained stable—such as Part I, which outlines substantive elements of a typical competition law based on UN Set terminology—whereas Part II updates its analytical commentaries, national examples, and comparative overviews over time. *See UNCTAD Model Law on Competition*, UNCTAD, https://unctad.org/publication/model-law-competition.

[86] UNCTAD created the Intergovernmental Group of Experts on Competition Law and Policy in 1998, and since then, it has held 22 sessions. *See Intergovernmental Group of Experts on Competition Law and Policy*, UNCTAD, https://unctad.org/topic/competition-and-consumer-protection/intergovernmental-group-of-experts-on-competition-law-and-policy.

[87] *See supra* note 72.

[88] *See Documents of the Working Group on the Interaction between Trade and Competition Policy (WGTCP)*, WTO, https://www.wto.org/english/tratop_e/comp_e/wgtcp_docs_e.htm.

[89] *See* Sokol, *supra* note 20, at 81-93; Hollman & Kovacic, *supra* note 71, at 300-1; and Fox & Arena, *supra* note 77, at 445-446. *See also* Lianos, *supra* note 70. *See also* Imelda Maher, *Competition Law in the International Domain: Networks as a New Form of Governance*, 29 J. L. SOC. 111 (2002); and Gary Hufbauer & Jisun Kim, *International Competition Policy and the WTO*, 54 ANTITRUST BULL. 327 (2009).

[90] *See Text of the 'July Package' — the General Council's Post-Cancún Decision*, WTO (Aug. 1, 2004),

including the difficulty of defining minimum competition standards, resistance from developing countries concerned about preserving policy autonomy and shielding their markets from predation by foreign firms, and U.S. opposition based on sovereignty concerns.[91] Despite occasional suggestions to revive the agenda, competition policy integration at the WTO remains dormant, particularly as other forums such as the OECD, UNCTAD, and the ICN have become more prominent.

In contrast to the failed WTO effort and to other pre-existing international organizations that gained relevance in the early 2000s, the U.S. led the launch of the ICN in 2001, following recommendations from the ICPAC.[92] The ICN emerged as an "international network of antitrust authorities" rather than an intergovernmental body.[93] It provided a virtual, soft law forum to develop global standards, disseminate "best practices," and foster technical cooperation among both developed and developing countries.[94] Unlike broader institutions such as the OECD, UNCTAD, or WTO, the ICN's single-minded focus on competition policy enabled it to fill a governance gap through non-binding yet influential outputs like recommended practices, manuals, and toolkits. Its informal, consensus-based structure—operating without a secretariat or enforcement powers—allowed for flexibility and broad participation, with a results-oriented approach, although resource constraints limited developing countries' engagement.[95] Rapidly expanding, the ICN became a key element of global convergence, with diverse national jurisdictions working to implement its recommendations and actively engaging in its meetings.[96]

In addition to the main international networks, regional blocs also created their own fora. The BRICS[97] and the European Competition Network

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https://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm.

[91] *See* Gerber, *supra* note 72, at 710-2; Hufbauer & Kim, *supra* note 89, at 329-31; and Fox & Arena, *supra* note 77, at 446.

[92] *See supra* note 72.

[93] *See U.S. and Foreign Antitrust Officials Launch International Competition Network*, U.S. FTC (Oct. 25, 2001), https://www.ftc.gov/news-events/news/press-releases/2001/10/us-foreign-antitrust-officials-launch-international-competition-network.

[94] *See* Sokol, *supra* note 20, at 105-16; Hollman & Kovacic, *supra* note 71, at 301-9; and Fox & Arena, *supra* note 77, at 481-4. *See also* Townley et al., *supra* note 40.

[95] *See* Sokol, *supra* note 20, at 122 ("[t]he ICN institutional choice permits a cost-benefit allowance that includes a results-based legitimacy as a function of the participatory model. […] To the extent that the ICN can create improved efficiency and reduce costs, it can overcome its lack of democratic legitimacy by providing good results"). *See also infra* note 118.

[96] *See* Townley et al., *supra* note 40, at 132-75.

[97] *See* Tembinkosi Bonakele, *The Case for a BRICS Competition Agenda*, *in* COMPETITION POLICY FOR THE NEW ERA: INSIGHTS FROM THE BRICS COUNTRIES 38, 38 (Tembinkosi Bonakele et al. eds., 2017) ("[c]ompetition authorities from the BRICS

(ECN) serve as prominent examples of this regionalization.[98] While these fora advance distinct agendas, they also reveal the cracks that emerged during the second wave of globalization. In the aftermath of the 2008 financial crisis, new tensions accelerated fragmentation in the liberalizing project of globalization,[99] and regional networks increasingly reflected this shift. They signaled the onset of a broader process of fragmentation in global competition policy, which later prompted efforts to develop alternative approaches to global governance.

These developments reveal both the achievements and the limitations of the second wave of competition policy globalization. While international networks succeeded in promoting some degree of convergence and harmonization through "best practices," peer reviews, and capacity building, they also reinforced an asymmetrical governance structure that dominant jurisdictions and technocratic expertise actively shaped. This dynamic laid the groundwork for the contemporary landscape of fragmentation and experimentation, where no single model prevails, and a plurality of institutional, regional, and epistemic approaches continually reshape competition policy. The next section turns to this emerging phase, exploring how these new trends reshape the global governance of competition in an era marked by geopolitical tensions, digitalization, and new theories of harm.

III. THIRD WAVE: UNCERTAINTY, FRAGMENTATION AND EXPERIMENTATION IN GLOBAL COMPETITION POLICY

As we advance through the 21st century, we observe multiple dimensions of uncertainty and fragmentation surrounding competition policy.[100] If at some point we could identify a certain degree of convergence around the consumer welfare standard as a foundational principle for antitrust and its globalization—especially during the first wave of global diffusion—that alignment has been gradually eroding.[101] This shift has fostered a broad

countries have been holding conferences once every two years since 2009. There are also many meetings in between conferences, and a Memorandum of Understanding (MoU) was signed"). *See also id.*, at 43-4 (providing an overview of the main features of the BRICS competition agenda).

[98] *See* Efstathia Pantopoulou, *European Competition Network (ECN)*, GLOBAL DICTIONARY OF COMPETITION LAW, https://www.concurrences.com/en/dictionary/european-competition-network. *See also* CHRISTOPHER TOWNLEY, A FRAMEWORK FOR EUROPEAN COMPETITION LAW: CO-ORDINATED DIVERSITY (2008) (exploring how the ECN institutionalizes cooperation among national authorities and the European Commission through mechanisms of soft law, peer review, and mutual learning).

[99] *See generally* Colantone et al., *supra* note 3.

[100] *See* Sadami & Santos, *supra* note 57, at 320-4.

[101] Several observers emphasize this moment of dissent surrounding competition policy.

diversity of new paradigms, including frameworks centered on the protection of the competitive process,[102] proposals for redefining the very notion of competition,[103] and approaches guided by the concept of capabilities.[104]

Moreover, enforcement discrepancies have widened over time, reflecting the erosion of consensus around the competition policy paradigm. New theories of harm, particularly in digital markets, have not only led to divergent approaches[105] to competition policy enforcement but also challenged prospects for global harmonization and convergence. Competition policy enforcement on most-favored-nation (MFN) clauses in online travel platforms illustrates this dynamic, as national competition authorities across Europe embraced different theories of harm and pursued divergent remedies.[106] Beyond digital markets, as new spaces of dispute—such as agreements among rivals to deal with environmental issues—emerge, this trend of divergent enforcement approaches tends to intensify.[107]

See, *e.g.*, JONATHAN B. BAKER, THE ANTITRUST PARADIGM: RESTORING A COMPETITIVE ECONOMY 32-52 (2019); Niamh Dunne, *The Antitrust Anti-Consensus*, PROJECT SYNDICATE (Dec. 11, 2020), https://www.project-syndicate.org/onpoint/antitrust-competition-law-end-of-old-consensus-by-niamh-dunne-2020-12; Lina M. Khan, *The End of Antitrust History*, 133 HARV. L. REV. 1655, 1656 (2020); and Eleanor Tyler, *Antitrust Battles to Become Even More Heated in 2023*, BLOOMBERG L. (Nov. 11, 2022), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-antitrust-battles-to-become-even-more-heated-in-2023.

[102] *See*, *e.g.*, Tim Wu, *After Consumer Welfare, Now What? The "Protection of Competition" Standard in Practice*, 1 COMPETITION POL'Y INT'L ANTITRUST CHRON. 1 (2018); TIM WU, THE CURSE OF BIGNESS: ANTITRUST IN THE NEW GILDED AGE 135-6 (2018); and Marshall Steinbaum & Maurice Stucke, *The Effective Competition Standard: A New Standard for Antitrust*, 87 U. CHI. L. REV. 595 (2020).

[103] *See* MAURICE STUCKE & ARIEL EZRACHI, COMPETITION OVERDOSE: HOW THE FREE MARKET MYTHOLOGY TRANSFORMED US FROM CITIZEN KINGS TO MARKET SERVANTS 254-6 (2020).

[104] *See* Rutger Claassen & Anna Gerbrandy, *Rethinking European Competition Law: From a Consumer Welfare to a Capability Approach*, 12 UTRECHT L. REV. 1, 4-7 (2016).

[105] *See* UNCTAD, GLOBAL COMPETITION LAW AND POLICY APPROACHES TO DIGITAL MARKETS 3-24 (2024) (providing an overview of global competition policy responses to digital markets, outlining different regulatory approaches while highlighting jurisdictional divergences, policy trade-offs, and the institutional challenges faced by developing countries). This also led to greater experimentation with remedies in digital markets. *See* Filippo Lancieri & Caio Mario S. Pereira Neto, *Designing Remedies for Digital Markets: The Interplay Between Antitrust and Regulation*, 18 J. COMPETITION L. & ECON. 613, 617-38 (2022) (exploring different remedies adopted or proposed for digital markets, and examining their interaction with emerging regulatory frameworks).

[106] *See* ECN, REPORT ON THE MONITORING EXERCISE CARRIED OUT IN THE ONLINE HOTEL BOOKING SECTOR BY EU COMPETITION AUTHORITIES IN 2016 4 (2017) ("since 2010 several national competition authorities ('NCAs') have investigated OTA parity clauses, and that these NCAs have adopted differing approaches").

[107] *See* Jurgita Malinauskaite, *Competition Law and Sustainability: EU and National Perspectives*, 13 J. EUR. COMPETITION L. & PRAC. 336, 343-8 (2022) (examining the

In addition, recent pushes to reform competition policy more broadly have further exposed underlying disagreements, highlighting the absence of a shared vision on how to regulate contemporary market structures and digital platforms. This is exemplified by the proliferation of diverse regulatory approaches, particularly the turn to ex-ante behavioral controls designed to shape competitive dynamics and prevent harm before it materializes. The EU has institutionalized this model through the Digital Markets Act (DMA),[108] but divergences remain even in Europe, where countries adopt varying complementary measures.[109] In other jurisdictions—such as Australia,[110]

different approaches taken by European jurisdictions in addressing environmental concerns through competition policy). *See also* OECD, ENVIRONMENTAL CONSIDERATIONS IN COMPETITION ENFORCEMENT (2021) (exploring the diverse ways competition authorities integrate environmental concerns into their enforcement strategies).

[108] *See* Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), 2022 O.J. (L 265) 1.

[109] Germany reformed the Gesetz gegen Wettbewerbsbeschränkungen (GWB), adding Article 19a to grant the German competition authority new powers to impose *ex ante* obligations. *See* Gesetz gegen Wettbewerbsbeschränkungen [GWB] [Act Against Restraints of Competition], June 26, 2013, BGBl. I at 1750, 3245, as amended by Gesetz [G], Dec. 5, 2024, BGBl. 2024 I Nr. 400, § 19a (Ger.), https://www.gesetze-im-internet.de/gwb/BJNR252110998.html. Likewise, the UK's Digital Markets, Competition and Consumers Act 2024 established tailored conduct requirements and pro-competitive interventions for firms with "strategic market status." *See* Digital Markets, Competition and Consumers Act 2024, c. 13 (UK), https://www.legislation.gov.uk/ukpga/2024/13/introduction.

[110] *See* ACCC, DIGITAL PLATFORM SERVICES INQUIRY: FINAL REPORT 19-25 (2025) (calling for a sector-specific regime with *ex ante* rules, conduct codes, and tighter merger controls to address entrenched digital market power).

Brazil,[111] India,[112] Japan,[113] South Africa,[114] and even the U.S.[115]—proposals for reform have been following distinct institutional logics, with local enforcement capacities, domestic legal frameworks, and specific policy priorities shaping their idiosyncratic trajectories.

This shifting environment naturally reshapes the prospects for advancing global integration in competition policy. The leadership of a single jurisdiction—such as the U.S.—no longer drives the agenda. Jurisdictions increasingly show less hesitation in issuing decisions that diverge from others in transnational cases. This trend surfaced in the Microsoft/Activision merger[116] as well as in recent joint venture reviews involving major automobile manufacturers.[117] Simultaneously, national approaches to

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[111] *See* BRAZILIAN MINISTRY OF FINANCE, DIGITAL PLATFORMS: COMPETITION ASPECTS AND REGULATORY RECOMMENDATIONS FOR BRAZIL 77-98 (2024) (proposing the creation an *ex ante* regulatory regime to designate digital platforms of systemic relevance and impose tailored obligations on them). The proposal built on Bill No. 2.768/2022, inspired by the DMA but widely criticized in Brazil. *See* Caio Mario S. Pereira Neto & Antonio Bloch Belizario, *Rethinking the Path to Digital Platform Regulation in Brazil: A Critical Appraisal of DMA-inspired Bill 2.768/22*, 25 BUS. L. INT'L 215 (2024); and Nicolo Zingales & Arthur Sadami, *Brazil: Ex Ante Regulation of Ecosystems, the Clash of Different Approaches and Paths Forward*, CECO (Jan. 1, 2025), https://centrocompetencia.com/brazil-ex-ante-regulation-of-ecosystems-the-clash-of-different-approaches-and-paths-forward/.

[112] *See* INDIAN MINISTRY OF CORPORATE AFFAIRS, REPORT OF THE COMMITTEE ON DIGITAL COMPETITION LAW 91-120 (2024) (proposing a Digital Competition Act to regulate "Systemically Significant Digital Enterprises" with tailored obligations).

[113] In 2024, Japan imposed *ex ante* rules on smartphone OSs and app stores via the Act on the Promotion of Competition for Specified Smartphone Software. *See* Tokutei Sumātofon Sofutou~ea no Kyōsō Sokushinhō [Act on Promotion of Competition for Specified Smartphone Software], Law No. 58 of 2024 (Japan), https://elaws.e-gov.go.jp/document?lawid=506AC0000000058.

[114] South Africa's 2018 Competition Amendment Act enabled the authority to run market inquiries and impose remedies where market structures harm competition. *See* Competition Amendment Act 18 of 2018, GN 175 of GG 42231 (14 Feb. 2019) (S. Afr.). In 2023, South Africa's competition authority used these powers in its Online Intermediation Platforms Inquiry, finding structural and behavioral issues in e-commerce, delivery, app stores, and classifieds. *See* COMPETITION COMMISSION OF S. AFR., ONLINE INTERMEDIATION PLATFORMS MARKET INQUIRY: FINAL REPORT AND DECISION (2023).

[115] *See* American Innovation and Choice Online Act, S.2033, 118th Cong. (2023).

[116] *See* Anna Langlois, *Microsoft Counsel: FTC, EU, UK Divergence Hampered Remedy Process*, GCR (Feb. 2, 2024), https://globalcompetitionreview.com/article/microsoft-counsel-ftc-eu-uk-divergence-hampered-remedy-process (quoting Microsoft's corporate counsel, who blamed regulatory divergence in the U.S., EU, and UK for forcing "piecemeal remedies"). *See also* Natalie Greenwood & Gavin Robert, *Who's afraid of the UK Competition & Markets Authority?*, 38 ANTITRUST 27 (2024) (highlighting that the UK competition authority diverged in the Microsoft/Activision Blizzard merger as part of its growing assertion of jurisdiction, particularly in digital and dynamic markets).

[117] Gaia-X, which European stakeholders launched in 2019, aims to develop secure and interoperable data spaces across sectors. In 2021, industry leaders created Catena-X to apply

specific issues—such as cooperation among rivals and the regulation of digital markets—have multiplied and consolidated, often at the expense of cohesive transnational strategies. Meanwhile, international networks have struggled to renew their relevance, constrained by restrictive institutional settings and a relative incapacity to keep pace with growing fragmentation. Insisting on single "best practices" proves increasingly untenable, as uncertainty and divergence heighten the risks of regulatory conflict and misalignment.[118] The aspiration for ever increasing harmonization, a hallmark of previous globalization waves, now seems not only out of step with current dynamics but also structurally unattainable.

Nevertheless, this scenario does not imply an abandonment of the global integration process for competition policy. Rather than signaling the "end of globalization" in this field, we may instead be witnessing the "end of globalization as we knew it."[119] Precisely because of this environment of uncertainty and fragmentation, national competition authorities have not retreated from engaging with one another; on the contrary, they continue to gather, share knowledge, and exchange information about each other's practices. Multiple fora for transnational dialogue on competition policy remain part of the routine for many authorities.[120] Moreover, several of the

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this framework to the automotive sector by enabling data sharing along the supply chain. They then formed Cofinity-X in January 2023 as a joint venture to implement and operate the Catena-X platform. The European Commission issued a comfort letter for Catena-X later that year, and the German competition authority confirmed it had no objections in May 2022. *See* Letter from Olivier Guersent, Director-General for Competition, European Commission, to *Gaia-X European Ass'n for Data & Cloud AISBL* (Oct. 19, 2021) (COMP/C.6/SS/RI/vvd), https://gaia-x.eu/wp-content/uploads/files/2021-11/Letter%20to%20Gaia-X_update.pd; and *First Component for Gaia-X: Bundeskartellamt Gives Green Light for Establishing Data Network for Automotive Industry (Catena-X)*, BUNDESKARTELLAMT (May 24, 2022), https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/24_05_2022_Catena.html. In February 2023, the Brazilian competition authority blocked the joint venture, citing concerns over anti-competitive data exchanges. After the parties refused to adopt the proposed remedies, they withdrew the notification and relaunched the project as Cofinity-X, structured to exclude Brazil. *See* CADE, Ato de Concentração No. 08700.004293/2022-32, Relator: Conselheiro Gustavo Augusto, 08.02.2023, Diário Oficial da União [D.O.U.], No. 33, Section 1, 15.02.2023, 42 (Braz.).

[118] This relates to the very structure of the ICN's legitimacy, which relies primarily on the effectiveness of its outputs—facilitating convergence among authorities, promoting "best practices", and exercising soft power through implementation pressure—while remaining fragile in its democratic foundations and contingent in its efficiency. *See* Townley et al., *supra* note 40, at 248-314. As global skepticism toward convergence grows, these networks face a serious legitimacy crisis. Unsurprisingly, some argue that ICN has stagnated as leadership ossified, diversity narrowed, and NGAs lost influence, limiting innovation and responsiveness to new competition policy challenges. *See* D. Daniel Sokol, *What Happened to the ICN?*, 14 J. EUR. COMPETITION L. & PRAC. 323, 323-4 (2023).

[119] *See supra* note 4.

[120] *See*, *e.g.*, ICN, STATEMENT OF ACHIEVEMENTS 2023/2024 (2024) (indicating that in

most pressing contemporary challenges for competition policy are inherently transnational in nature, which facilitates and even necessitates the exchange of regulatory experiences. This is evident in the case of digital markets,[121] but it also extends to other domains, such as the interplay between competition and environmental issues.[122]

All of this gives rise to a third wave in the globalization of competition policy. Instead of promoting convergence, this new phase emerges as an institutional laboratory for experimentation. Ongoing uncertainty and fragmentation have sparked global interest in diverse domestic experiences, especially as clear solutions to enforcement challenges remain elusive. National competition laws now stand at a pivotal juncture—not by uniting around a single model or dominant paradigm, but through the interplay of multiple frameworks that coexist and cross-pollinate across borders.[123] In this context, many view divergence not as a flaw, but as a chance to address shared global challenges in competition policy.

Multiple actors engaged in the global integration process for competition policy are under reorganization in this third wave of globalization. National competition authorities increasingly claim leadership on globally relevant issues—for instance, the Dutch authority has long

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2024, "more than 100 members participated in the ICN Check-In, which was set up to confirm members' contact information and solicit direct feedback on ICN activities"); and *OECD Competition Open Day*, OECD (Feb. 26, 2025), https://www.oecd.org/en/networks/oecd-competition-open-day.html (stating that the 2025 OECD Competition Open Day "gathered over 1000 participants in Paris and online on 26 February 2025 to discuss the emerging competition challenges, generative AI, standard of proof and cross-border mergers in digital markets").

[121] Since 2021, the U.S. and the EU have convened four meetings through the Joint Technology Competition Policy Dialogue to strengthen and consolidate transatlantic cooperation in digital markets. *See EU-US Hold Fourth Joint Technology Competition Policy Dialogue*, U.S. FTC (Apr. 11, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/eu-us-hold-fourth-joint-technology-competition-policy-dialogue.

[122] For example, in UNCTAD's 2022 Ad Hoc Expert Meeting on Competition, Consumer Protection and Sustainability, the discussion addressed how international cooperation can promote sustainability, while also emphasizing how the interplay between competition policy and environmental protection aligns with the Sustainable Development Goals. *See Ad Hoc Expert Meeting on Competition, Consumer Protection and Sustainability*, UNCTAD (Sep. 22, 2022), https://unctad.org/meeting/ad-hoc-expert-meeting-competition-consumer-protection-and-sustainability. *See also* OECD, SUSTAINABILITY AND COMPETITION 29 (2020) (highlighting the role of international cooperation in avoiding conflicting enforcement of sustainability initiatives and stressing the importance of comity in addressing cross-border challenges).

[123] *See* Imelda Maher, *Competition Law Fragmentation in a Globalizing World*, 40 L. SOC. INQ. 553, 568 (2015) ("competition law will remain diverse with strong territorial competition regimes. At the same time, there are trends suggesting that national competition law is moving toward a pivotal moment, but one not on a single competition model or dominant economic paradigm").

championed the integration of environmental concerns into competition analysis,[124] while the EU has been taking a more assertive stance in regulating digital markets.[125] International networks are also evolving. For example, the OECD, once more insulated and committed to safeguarding a narrow antitrust orthodoxy, now finds itself increasingly exposed to institutional diversity and heterodox perspectives. Its recent initiatives venture into areas where prescribing "best practices" proves implausible and institutional diversity becomes essential, as reflected in its roundtables exploring the interplay between competition policy and democracy,[126] inequality,[127] inflation,[128] and sustainability.[129] Other roundtables delve into even more disaggregating topics, such as the multiple goals that competition policy should pursue,[130] the strengths and limitations of the consumer welfare

[124] *See* Simon Holmes, *Sustainability and Competition Policy in Europe: Recent Developments*, 15 J. EUR. COMPETITION L. & PRAC. 562, 564 (2024) ("[t]he Dutch competition authority (the 'ACM') has been at the forefront of the movement to take climate change and sustainability into account in modern competition policy (and published the first and most progressive draft guidelines in this area)").

[125] *See* Eleanor M. Fox, *The Decline, Fall, and Renewal of U.S. Leadership in Antitrust Law and Policy*, 4 COMPETITION POL'Y INT'L ANTITRUST CHRON. 8, 11 (2022) (indicating EU competition policy's leadership in enforcing rules in digital markets, as it offers a more effective framework to tackle cross-border and cross-disciplinary challenges by aligning enforcement with broader institutional goals such as privacy and the single market).

[126] *See The Interaction Between Competition and Democracy*, OECD (Nov. 7, 2024), https://www.oecd.org/en/publications/the-interaction-between-competition-and-democracy_8b3a575f-en.html. *See also* OECD, THE INTERACTION BETWEEN COMPETITION AND DEMOCRACY (2024).

[127] This section took place during the 2024 Global Forum on Competition. *See Global Forum on Competition 2024*, OECD, https://www.oecd.org/en/events/2024/12/global-forum-on-competition-2024.html. *See also* Eleanor M. Fox, *Competition and Inequality: Background Note*, OECD DAF/COMP/GF(2024)5 (Nov. 21, 2024).

[128] This section took place during the 2023 OECD Competition Open Day. *See Competition and Inflation*, OECD, https://web.archive.org/web/20230127204401/https://www.oecd.org/competition/competition-and-inflation.htm. *See also* OCDE, COMPETITION AND INFLATION: OECD COMPETITION POLICY ROUNDTABLE BACKGROUND NOTE (2022).

[129] This session took place during the 2021 OECD Competition Open Day. *See Sustainability and Competition*, OECD, https://web.archive.org/web/20210308170922/https://www.oecd.org/daf/competition/sustainability-and-competition.htm. *See also* OECD, *supra* note 122.

[130] This section took place during the 2022 Global Forum on Competition. *See The Goals of Competition Policy*, OECD (Dec. 7, 2022), https://web-archive.oecd.org/temp/2022-12-08/640052-640052-the-goals-of-competition-policy.htm.

standard,[131] and proposals to "reset" the field's conceptual foundations.[132] These are all discussions about uncertainties regarding the future, where different perspectives are not only possible but they are actually required to develop new approaches to complex problems.

Ultimately, the third wave of globalization in competition policy is redefining global integration—not as a trajectory toward convergence, but as a pluralistic and adaptive process shaped by fragmentation, institutional diversity, and experimentalism. In this new environment, the global competition community increasingly engages in a dynamic exchange of ideas, possible frameworks, and alternative enforcement strategies, with potential for more horizontal dialogues across jurisdictions. While this pluralism inevitably increases frictions and generates complexity, it also opens space for innovative responses to shared challenges. Consequently, the global realm of competition policy is gradually metamorphosing into an arena for the exchange of experiences and interinstitutional learning. Global integration seems to persist, not through aspired uniformity, but through the gradual emergence of a more flexible governance architecture that balances respect for domestic specificities with the need for coordination on transnational competition issues.

This optimistic prospect for a third wave of competition policy globalization does not mean that pluralism comes without tensions. It carries a grimmer counterpart: pluralism may fuel open and increasingly conflictual regulatory fragmentation.[133] Beyond potential economic costs,[134] a fractured

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[131] *See Advantages and Disadvantages of Competition Welfare Standards*, OECD, https://web.archive.org/web/20231130004533/https://www.oecd.org/competition/advantages-and-disadvantages-of-competition-welfare-standards-in-competition.htm. *See also* OECD, THE CONSUMER WELFARE STANDARD: ADVANTAGES AND DISADVANTAGES COMPARED TO ALTERNATIVE STANDARDS (2023).

[132] This section took place during the 2020 OECD Global Forum. *See Competition Policy: Time for a Reset?*, OECD, https://web.archive.org/web/20210619235839/https://www.oecd.org/daf/competition/competition-policy-time-for-a-reset.htm. *See also* OECD, *Competition Policy: Time for a Reset?*, OECD DAF/COMP/GF(2020)14 (May 19, 2021).

[133] While fragmentation is not inherently problematic, it can become troublesome when institutional overlaps and gaps lead to contradictory rules or enable forum-shopping by powerful actors. *See* Frank Biermann et al., *The Fragmentation of Global Governance Architectures: A Framework for Analysis*, 9 GLOB. ENVTL. POL. 14, 16-21 (2009). (distinguishing different levels of fragmentation in global governance—synergistic, cooperative, and conflictive—based on institutional overlap, normative coherence, and interplay management).

[134] *See* Joseph Kalmenovitz et al., *Regulatory Fragmentation*, 80 J. FIN. 1081, 1102-16 (2025) (finding that regulatory fragmentation can increase firm costs, reduce productivity and profitability, hamper growth, deter entry, and disproportionately harm smaller firms—especially when regulatory requirements are inconsistent across agencies—and that it weakens firms' ability to influence policy through lobbying by diffusing efforts across

policy space can spark jurisdictional clashes and, at times, top-down efforts to impose rules through asymmetrical negotiations.[135] Even without explicit imposition, stronger jurisdictions may drive asymmetric legal transplants that reinforce structural power imbalances.[136] Taken together, these dynamics could recreate, in intensified form, similar hierarchies that defined the first wave—this time, not through political influence, but through imposition. The real challenge lies in steering the third wave to harness institutional diversity not as a source of fragmentation and conflict, but as a basis for more democratic and context-aware forms of global coordination.

IV. THE ROAD AHEAD: BUILDING A DEMOCRACY-ENHANCING APPROACH TO GLOBALIZATION OF COMPETITION POLICY

Recently, amid growing distrust in globalization, Dani Rodrik proposed rethinking global governance through a *democracy-enhancing approach*.[137] Instead of pursuing deep, top-down harmonization or the use of global rules, Rodrik advocates for governance frameworks that safeguard domestic democratic choices and preserve each nation's policy space to shape its own economic, social, and regulatory priorities.[138] He contends that global coordination should focus primarily on clear cross-border externalities—such as climate change, financial instability, or tax evasion—that no country can resolve on its own. These externalities, Rodrik explains, typically involve

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multiple regulators).

[135] For instance, the Trump administration threatened retaliatory tariffs after the EU began enforcing the DMA against Big Tech, with FTC Chair Andrew Ferguson calling it a *de facto* tax on U.S. firms and a politically motivated attack on American companies abroad. *See* Jacob Parry, *EU Risks More Trump Tariffs in Looming Big Tech Crackdown*, POLITICO (Mar. 19, 2025), https://www.politico.eu/article/big-tech-crackdown-europe-donald-trump-tariffs-united-states-digital-competition/; and Trump's Antitrust Agency Chief Blasts EU Digital Rules as 'Taxes on American Firms', POLITICO (Apr. 2, 2025), https://www.politico.eu/article/trumps-antitrust-agency-chief-blasts-eu-digital-rules-as-taxes-on-american-firms/.

[136] *See* Anu Bradford et al., *The Gravity of Legal Diffusion*, 2023 U. CHI. LEGAL F. 35, 47-55 (2024) (indicating that countries are more likely to adjust their laws to converge with those of a leading regulator when they have larger economies and are geographically closer).

[137] *See* Dani Rodrik, *Putting Global Governance in Its Place*, 35 WORLD BANK RES. OBS. 1, 14-5 (2025).

[138] *See id.*, at 3 (arguing that "[u]nlike 'globalization-enhancing global governance,' democracy-enhancing global governance would leave most policy domains to national regulation, with global oversight restricted to procedural safeguards—such as transparency, accountability, the use of scientific/economic evidence—intended to reinforce democratic deliberation"). *See also* Amitav Acharya, *The Future of Global Governance: Fragmentation May Be Inevitable and Creative*, 22 GLOB. GOVERNANCE 453 (2016) (defending fragmentation as an inevitable and potentially creative response to the diffusion of power, ideas, and actors in a more plural and decentralized global order).

either the management of global commons, which require collective stewardship, or "beggar-thy-neighbor" policies, where one nation's actions directly harm others and, therefore, call for some degree of restriction at the global level.[139]

Although Rodrik focuses more on international agreements— especially those related to trade— his framework can also apply to international efforts for promoting the global convergence of domestic policies. This perspective, by prioritizing flexibility, institutional diversity, and democratic accountability over rigid uniformity,[140] may offer valuable normative guidance for reshaping the global integration process for competition policy amid the third wave, in an increasingly uncertain and fragmented world.[141] While this represents a significant imaginative effort about a globalization process that is still adjusting to a new reality, we can discuss some reflections on key elements that could steer competition policy towards a democracy-enhancing approach.

First, policymakers should delineate any global project for harmonization of competition policy more precisely to focus on what is genuinely necessary. Drawing from Rodrik's framework, a democracy-enhancing approach to global governance in this field should concentrate on addressing true cross-border externalities, rather than pursuing harmonization for its own sake. Although competition policy has traditionally been rooted in domestic regulation,[142] certain market dynamics generate spillovers that warrant international coordination. These arise when competitive dynamics or the concentration of market power allow firms to externalize costs onto global commons[143] or when gaps in national

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[139] *See* Rodrik, *supra* note 137, at 4-8.

[140] *See id.*, at 14 ("using external restraints to shape domestic policy has a certain cost in terms of democratic legitimacy: it reinforces nativist populists' message of sovereignty being ceded to cosmopolitan technocrats").

[141] *See* Lianos, *supra* note 73, at 70-80 (advocating a similar solution by proposing a participation-centered model of global governance in competition policy, grounded in legal pluralism and multi-polarity, where trust-building between authorities and stakeholders replaces the imperative of policy convergence).

[142] Despite its predominantly domestic character, there remains room for the extraterritorial enforcement of competition policy. *See* Joseph P. Griffin, *Extraterritoriality in U.S. and EU Antitrust Enforcement*, 67 ANTITRUST L.J. 159, 159-80 (1999) (offering an overview of how competition policy is enforced extraterritorially by both the U.S. and the EU).

[143] There is a lack of studies of the role of competition policy scholarship in protecting global commons. For a notable exception, *see* Eleanor M. Fox, *Can Antitrust Policy Protect the Global Commons From the Excesses of IPRs?*, *in* INTERNATIONAL PUBLIC GOODS AND TRANSFER OF TECHNOLOGY UNDER A GLOBALIZED INTELLECTUAL PROPERTY REGIME 758, 765-7 (Keith E. Maskus & Jerome H. Reichman eds., 2005) (arguing that competition policy can contribute to protecting the global commons by curbing the antitrust immunities that shield firms from liability when they manipulate public institutions for private,

enforcement encourage beggar-thy-neighbor effects, enabling firms to secure competitive advantages at the expense of other jurisdictions.[144] In such scenarios, competition distortions reinforces asymmetries between countries, underscoring the need for coordinated governance to prevent regulatory races to the bottom, the overexploitation of shared resources and negative spillovers.

One example is the global digital economy, where dominant platforms may leverage data-driven network effects and cross-border operations to consolidate market power, exploiting regulatory gaps between jurisdictions.[145] This dynamic can generate beggar-thy-neighbor effects: when one jurisdiction enforces strict regulation while others maintain laxer regimes, platforms may relocate or arbitrage between them, preserving globally harmful practices and exporting competitive harms to countries that lack jurisdictional reach.[146] International coordination could advance through global governance mechanisms that establish common standards and cooperation frameworks, enabling collective responses to cross-border anticompetitive strategies while preserving national policy autonomy[147]— particularly by promoting greater transparency through information disclosure requirements.[148] Here, international coordination aims not to

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anticompetitive ends).

[144] *See* Joseph Francois & Henrik Horn, *Antitrust in Open Economies*, 282 CONTR. ECON. ANAL. 463, 465-8 (2007) (providing a model of government incentives to under-enforce competition policy in open economies, to favor domestic firms and shift rents from foreign competitors, thereby generating beggar-thy-neighbor effects).

[145] *See* Filippo Lancieri et al., *The Politics of Fragmentation and Capture in AI Regulation*, PROMARKET (July 7, 2025), https://www.promarket.org/2025/07/07/the-politics-of-fragmentation-and-capture-in-ai-regulation/ ("companies exploit differences between jurisdictions–effectively pitching one another–to shape or evade rules. In this process, they can capture regulators and push them away from the public interest towards more private goals (as Mistral has partially done in the EU, as have tech companies in the U.S.). Regulatory capture is a recurring theme for digital regulations. Tech companies, for example, have successfully captured the Irish privacy regulator to preclude GDPR enforcement").

[146] *See* Robert Fay, *A Model for Global Governance of Platforms*, *in* REGULATING BIG TECH: POLICY RESPONSES TO DIGITAL DOMINANCE 255, 261 (Martin Moore & Damian Tambini eds., 2022) (contending that, among other risks, "[e]mbedded vested interests and the power to lobby on the direction of regulation risks a race to the lowest common denominator in rules and regulations and contributes to a lack of effective enforcement of rules," particularly in the absence of a global governance framework for regulating digital platforms).

[147] *See id.*, at 262-72 (offering a multi-layered governance blueprint that combines standard-setting, monitoring, and risk assessment to foster transparency, accountability, and democratic oversight in the global digital economy).

[148] *See* Tim O'Reilly, *Regulating Big Tech Through Digital Disclosures* 8-12 (IIPP Policy Brief, No. 26, 2023) (providing a comprehensive framework for mandatory disclosures that align external reporting with internal operational metrics, monetization

constrain domestic creativity or autonomy, but to strengthen national interventions against transnational corporate strategies, safeguarding global interests through context-sensitive solutions.

Second, a democracy-enhancing approach to global competition policy integration rejects rigid uniformity and instead fosters structured spaces for cooperation that respect national specificities. Policymakers can advance this agenda by designing a model of coordinating diversity at a global level, where central institutions define broad objectives and map cross-border externalities, while regional and national authorities retain discretion to implement rules tailored to their contexts—maintaining flexibility within shared parameters and enabling mutual learning across jurisdictions.[149] The EU, despite its limitations, already exemplifies this model coordinated diversity.[150] While this framework could help establish minimal global principles for competition policy—even amid the global governance crisis—a more realistic application lies in leveraging the coordinated diversity model to transform institutional networks into arenas for experimental learning, replacing strict harmonization with dynamic exchanges that foster pluralism and enhance epistemic legitimacy.

For instance, networks like the OECD and ICN, facing growing pressure for diversification, have already started adapting and can further this process by institutionalizing rotating leadership, broadening participation from underrepresented jurisdictions, and creating dedicated working groups that explore institutional diversity instead of pursuing convergence.[151] These initiatives may embrace comparative analysis, discussing different theories of harm applied to similar problems, evaluating alternative remedies tested by different jurisdictions, among other experiments. Regional groups like the ECN and BRICS advance these goals by fostering localized coordination and

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strategies, and governance practices, thereby enhancing transparency, investor insight, and regulatory oversight of digital platform power).

[149] *See* Townley, *supra* note 98, at 267-328 (proposing the idea of "coordinated diversity" for competition policy as a governance model that balances central coordination of broad objectives and cross-border externalities with local discretion for tailored implementation, leveraging hierarchy to set overarching goals, networks to facilitate dialogue and mutual learning, and regulatory competition to stimulate innovation and responsiveness across jurisdictions).

[150] *See id.*, at 339-521 (discussing how the EU combines central coordination, particularly through the European Commission's hierarchical oversight, with mechanisms of networked cooperation such as the ECN, and regulatory competition among Member States, enabling a flexible yet integrated system that accommodates diverse national practices while pursuing common competition goals).

[151] *See* Townley et al., *supra* note 40, at 297 (describing some limited ICN initiatives toward inclusion, such as the introduction of rotating leadership in working groups, the broadening of co-chair selection criteria to reflect geographic and economic diversity, and the creation of participatory spaces like "Town Hall" sessions and the ICN blog).

peer learning, enabling smaller clusters of countries to craft shared solutions while respecting internal heterogeneity.[152]

Finally, closer attention to Global South experiences can help advance a democracy-enhancing approach to global competition policy integration. Legal systems in the Global South often embody forms of "legal heterodoxy"—adaptations that deviate from orthodox prescriptions not by deficiency, but as deliberate responses to specific socio-economic, political, and historical contexts.[153] These experiences frequently reject the "modularity" characteristic of law-and-economics orthodoxy,[154] which frames competition policy narrowly around efficiency and consumer welfare while sidelining broader concerns such as inequality, development, and social justice. While such concerns have long circulated around Southern jurisdictions and shaped their legal frameworks—often informally or outside institutional channels—they are only recently gaining traction in the Global North. In earlier waves of competition policy globalization, the particularism of these experiences often kept them at the margins of mainstream discussions. Today, however, that same particularism offers a useful vantage point: it helps identify what has worked, what has failed, and what might be reimagined amid current challenges. Engaging with Global South frameworks is not just about inclusivity or legitimacy, but also about gaining conceptual and institutional insight—especially as Northern jurisdictions struggle to reform enforcement and find new paths to deal with emerging problems.

Some of these experiences position the Global South as a potential source of "reverse convergence"[155] for shaping coordination under a global

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[152] *See* Lianos, *supra* note 73, at 80-113 (defending the role of BRICS in reshaping global governance of competition policy by institutionalizing cooperation, developing a joint research platform, and advancing legal and methodological pluralism that reflects the developmental priorities and socio-economic conditions of emerging economies). *See also* Bonakele, *supra* note 97, at 44-50 (proposing a BRICS competition agenda focused on technical cooperation, coordinated enforcement, research on competition and poverty, and capacity-building to strengthen expertise from emerging markets); Gabriele Carovano, *The 'ECN Plus-Plus': How Could it Look Like?*, 11 J. EUR. COMPETITION L. & PRAC. 442, 443-5 (2020) (advocating for an enhanced ECN by expanding its membership to include non-EU competition authorities, broadening its scope to cover mergers and purely national antitrust cases, creating a one-stop-shop for leniency applications, and strengthening investigative assistance mechanisms to foster deeper cross-border cooperation).

[153] *See* Kevin E. Davis & Mariana Pargendler, *Legal Heterodoxy in the Global South: Adapting Private Laws to Local Contexts*, *in* LEGAL HETERODOXY IN THE GLOBAL SOUTH 1, 14 (Kevin E. Davis & Mariana Pargendler eds., 2025) (defining this legal heterodoxy as "the emergence of legal institutions that (i) deviate from orthodox approaches currently prevailing in the Global North by (ii) pursuing distinct and potentially broader public policy objectives or reflecting different values, ideologies, or worldviews").

[154] *See id.*, at 6-7.

[155] *See* Mariana Pargendler, *Corporate Law in the Global South: Heterodox*

integration process for competition policy. For instance, the recent OECD debate on the relationship between competition policy and inflation[156] could draw from Brazil's experience, where competition policy has historically been linked to price stabilization and the democratization of markets, dating back to the early 20th century.[157] The 1990s reforms further aligned competition law with broader monetary stabilization and economic liberalization efforts.[158] Similarly, the OECD's growing attention to the links between competition and inequality[159] could draw from the South African experience, where competition policy explicitly addresses structural racial and social inequalities. Indeed, South African competition policy embeds public interest considerations—such as ownership by historically disadvantaged persons, participation of small and medium enterprises, and socio-economic transformation—across merger control, abuse of dominance, and price discrimination rules, enabling authorities to impose conditions that tackle structural inequalities alongside competition concerns.[160]

Advancing a global integration project for competition policy under a democracy-enhancing framework requires reimagining governance beyond rigid convergence. It calls for a pluralistic architecture that combines procedural cooperation on genuine cross-border externalities with respect for national autonomy and institutional diversity. Mechanisms for collective learning, regional and global dialogues, and the epistemic contributions of

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Stakeholderism, *in* LEGAL HETERODOXY IN THE GLOBAL SOUTH 299, 304 (Kevin E. Davis & Mariana Pargendler eds., 2025) (contending that "the increasingly welfarist, nonmodular trend in the Global North can be interpreted as a surprising and unpredicted form of 'reverse convergence' in corporate law as in other areas of law, with economic and social crises – and the urgency of necessary solutions – bringing the Global North closer to the Global South in various respects").

[156] *See supra* note 128

[157] *See* Cabral, *supra* note 57, at 127-8.

[158] *See* OECD, COMPETITION LAW AND POLICY IN BRAZIL: A PEER REVIEW 13 (2005) ("[t]he modern era of competition policy in Brazil began in 1994. In response to a period of hyperinflation, the '*Real* Plan' was implemented in that year. Its principal features were the introduction of tight fiscal and credit policies and a new currency (the *real*) pegged to the U.S. dollar. As a part of the 1994 reforms, a new competition law (No. 8884) was enacted with the expectation that it could be employed to deal with inflated prices"). *See also* Ricardo Medeiros de Castro, *Competition and Inflation – Note by Brazil*, OECD Doc. DAF/COMP/WD(2022)98 (Nov. 8, 2022) (providing the Brazilian competition authority's contribution to the OECD Competition Committee's discussions on the interplay between competition policy and inflation dynamics, including the historical experience of Brazil and the potential role of antitrust enforcement in curbing inflationary pressures).

[159] *See supra* note 127.

[160] *See* Competition Act 89 of 1998 pmbl., § 2(f), § 3(2), § 8(4), § 9(1)(a)(ii), § 9(1A), § 9(3), § 9(3A), § 9(4), § 10(3)(b)(ii), § 12A(3)(c), § 12A(3)(e), GN 1392 of GG 19412 (30 Oct. 1998) (S. Afr.). *See also* Liberty Mncube & Hardin Ratshisusu, *Competition Policy and Black Empowerment: South Africa's Path to Inclusion*, 11 J. ANTITRUST ENF'T. 74 (2023).

Global South experiences play a critical role in advancing this endeavor. By navigating the "false needs"[161] that often accompany globalization efforts and remaining open to learning through experimentation, global competition policy can evolve into a more inclusive, adaptable, and democratically accountable domain of global governance.

CONCLUSION

The trajectories mapped across the three waves of globalization reveal that the global integration of competition policy has never followed a linear or uniform path. Instead, this process has moved in multiple directions—ranging from efforts to harmonize rules and promote convergence to episodes of fragmentation and institutional experimentation. While the first two waves emphasized harmonization and diffusion—initially through U.S. leadership and later through the consolidation of international networks advocating "best practices"—the third wave departs significantly from these earlier aspirations, representing a turning point in this process. The contemporary landscape reflects a shift toward pluralism and adaptability, driven by the recognition that uniform solutions may be ill-suited for addressing the diverse challenges posed by evolving market structures and new aspirations of the 21st century. This evolution is not merely the product of institutional design, but also of increased uncertainty, expansion of objectives, geopolitical transformations, regulatory rivalries, and the growing assertion of jurisdictions outside the traditional centers of global economic governance.

This more experimental landscape also carries a grimmer counterpart: institutional diversity may deepen fragmentation, fuel regulatory clashes, and prompt top-down efforts to export rules through asymmetrical negotiations. If not carefully steered, it risks reproducing—now more intensely—the very hierarchies that the third is gradually eroding.

However, there is a more optimistic outcome possible. One that considers these tensions created by fragmentation as an intrinsic feature of a governance architecture that prioritizes flexibility, context-specific solutions, and increased democratic accountability over rigid convergence. Here, observers should not view fragmentation as a breakdown of the global project, but as an opportunity to rethink the terms of integration itself. A democracy-enhancing approach to globalization of competition policy offers a normative and institutional pathway to navigate this complexity. By

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[161] *See* ROBERTO MANGABEIRA UNGER, FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY xx (2004) ("[t]he illusions of false necessity arise because we surrender to the social world, and then begin to mistake present society for possible humanity, giving in to the ideas and attitudes that make the established order seem natural, necessary, or authoritative").

focusing on genuine cross-border externalities—such as those related to global commons or beggar-thy-neighbor effects—policymakers can target coordination efforts more precisely and enhance their effectiveness, avoiding the pitfalls of one-size-fits-all models, while preserving the national policy space.

Thus, depending on how the third wave of globalization unfolds, global competition policy can evolve not as a fixed or universalized blueprint, but as a dynamic and inclusive field of governance. Building structured spaces for mutual learning, fostering regional networks, and integrating underrepresented perspectives—particularly from the Global South—can enhance the legitimacy and effectiveness of international coordination. Rather than aspiring to erase differences, this optimistic renewed global integration project can harness institutional diversity as a source of innovation and resilience. In this reimagined framework, global competition policy becomes an open-ended process of experimentation, dialogue, and adaptation—capable of responding to the shifting contours of the global economy while safeguarding democratic principles and socio-economic pluralism.

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