TOWARD INTERNATIONAL ANTITRUST: CHALLENGES AND OPPORTUNITIES

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Antitrust enforcement remains a concrete policy domestically, and an eccentricity internationally. Yet, global antitrust is imperative: International mergers, international cartels, and multinationals engaging with customers across borders prove the need for greater legal certainty when it comes to antitrust enforcement and policy. In this article, I expose the impossibility theorem of global antitrust: international coordination of antitrust policies remains a dream. I also point out how the current trend of ex ante competition rules and the internationalization of a precautionary approach to antitrust further complexifies the advent of a meaningful international antitrust framework and content. Finally, I suggest a simple, yet potentially powerful, solution for precipitating the advent of global antitrust: The re-activation of the institutional and policy tools already available at the World Trade Organization. In that regard, the G7 and the Organization for Economic Cooperation and Development have a considerable role to play in laying the intellectual grounds to make this solution a reality.

Antitrust enforcement remains a concrete policy domestically, and an eccentricity internationally. For decades, a chorus of experts has advocated in vain for stronger, more substantial cooperation between antitrust agencies regarding both their procedures and their antitrust policies.[2] The latest case in point: The pharmaceutical company Illumina can acquire its former spinoff Grail according to the administrative judge of the Federal Trade Commission ("FTC") but not according to the European Commission ("EC"), which prohibited the very acquisition that the FTC approved one week after the EC's decision.[3]

In 2001, the divergence between U.S. antitrust and European antitrust reached its apex when, again, the EC prohibited the acquisition of Honeywell by General Electric whereas the Department of Justice ("DOJ") approved the merger.[4] What have we learned in more than twenty years? How come the cooperation between antitrust agencies remains so ineffective?[5] How can we ever think of a global cooperation between antitrust agencies when the two main antitrust agencies – namely the EC and the dual federal agencies FTC/DOJ in the U.S. – cannot effectively cooperate and ultimately coordinate their policies?[6]

Global antitrust is imperative: International mergers, international cartels, and multinationals engaging with customers across borders prove the need for greater legal certainty when it comes to antitrust enforcement and policy.[7] Despite this imperative, the Balkanization of antitrust remains *de rigueur.*

I first explain this conundrum: The impossibility theorem of global antitrust prevents antitrust coordination (1). I then focus on the current trend of *ex ante* competition rules and the internationalization of a precautionary approach to antitrust which further complexifies the advent of a meaningful international antitrust framework and content (2). Finally, I suggest a simple, yet potentially powerful, solution for precipitating the advent of global antitrust: The re-activation of the institutional and policy tools already available at the World Trade Organization ("WTO") (3). The G7 and the Organization for Economic Cooperation and Development ("OECD") have a considerable role in laying the intellectual grounds to make this solution a reality.[8]

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2 Barry E. Hawk, "Internationalization of World Economies and State/Federal Antitrust Laws and Policy," Washburn Law Journal, 293-305 (1990); Andrew Guzman, "Antitrust and International Regulatory Federalism," 76 *New York University Law Review*, 1142-1163 (2001); Yusaf H. Akbar & Bernhard Mueller, "Global Competition Policy: Issues and Perspectives," 3 *Global Governance* 59-81 (1997).

3 Mark Terry, "EU Vetoes Illumina's Acquisition of Grail Despite Win is US Court" *Biospace*, September 6, 2022, https://www.biospace.com/article/us-judge-rejects-ftc-s-anti-competitive-argument-in-illumina-grail-case/

4 See, for instance, Donna E. Patterson & Carl Shapiro, "Transatlantic Divergence in GE/Honeywell: Causes and Lessons," 16 Antitrust 18-26 (2001) (asking "in an era of close cooperation and supposed convergence, how did the North American and European antitrust authorities reach diametrically opposed conclusions about the likelihood of anti-competitive effects in a high-profile transaction involving world-wide markets?"); Eleanor M. Fox, "Mergers in Global Markets: GE/Honeywell and the Future of Merger Control," 23 *University of Pennsylvania Journal of International Economic Law*, 457-468 (2002) ("world-level antitrust is a vision for the future; it will not come tomorrow.") Following the controversy, the U.S. and EU antitrust agencies issued "best practices for coordinating merger reviews. See FTC, "United States and European Union Antitrust Agencies Issue 'Best Practices' for Coordinating Merger Reviews', October 30, 2002, https://www.ftc.gov/news-events/news/press-releases/2002/10/united-states-european-union-antitrust-agencies-issue-best-practices-coordinating-merger-reviews . Apparently, nothing has dramatically improved over the last two decades.

5 The EU and the US launched a "joint technology competition policy dialogue" despite considerable divergence and absent substantive convergence. See European Commission, "EU-US launch Joint Technology Competition Policy Dialogue to foster cooperation in competition policy and enforcement in technology sector," Press Release, December 7, 2021, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6671.

6 See, for instance, Michal Halperin & Ketan Ahuja, "How to Converge the US and European Antitrust Approaches Toward Big Tech," *ProMarket,* September 8, 2022, https://www.promarket.org/2022/09/08/how-to-converge-the-us-and-european-antitrust-approaches-toward-big-tech/ (proposing measures competition agencies can adopt to increase convergence); Michal Halperin, Ketan Ahuja, "The Case for Convergence between American and European Regulation of Big Tech," SSRN Working Paper, August 26, 2022, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4194085.

7 Christopher Yoo, "Due Process in International Antitrust Enforcement: An Idea Whose Time Has Come," *CPI Antitrust Chronicle*, September 2019, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3169&context=faculty_scholarship ; Christopher Yoo, Thomas Fetzer, Shan Jiang & Yong Huang, "Due Process in Antitrust Enforcement: Normative and Comparative Perspectives," 94 Southern California Law Review, 843-926 (2021) (identifying procedural requirements to improve decision making); Michal Halperin. & Ketan Ahuja, "The Case for Convergence between American and European Regulation of Big Tech," SSRN Working Paper, August 26, 2022, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4194085 ("Divergence risks a patchwork of regulatory regimes and initiatives, confusion for businesses and their customers, and needless frictions around international technology services.")

8 The G7's last effort in this area took place in November when G7 competition heads gathered for a two-day digital summit and published a compendium that nevertheless exclusively focused on "digital markets" and that failed to propose concrete "next steps." See G7 United Kingdom, "Compendium of approaches to improving competition in digital markets," November 29, 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1044981/Compendium_of_approachess_to_improving_competition_in_digital_markets_publication.pdf . See also, G7 Germany, "Ministerial Declaration: G7 Digital Minister's Meeting, May 11, 2022, http://www.g7.utoronto.ca/ict/2022-declaration.html#:~:text=We%2C%20the%20Digital%20Ministers%20of,to%20be%20'Stronger%20Together'.

I. A CONUNDRUM: GLOBAL ANTITRUST'S IMPOSSIBILITY THEOREM

More than two decades ago, Professor Andrew Guzman asked, "is international antitrust possible?," and concluded that international cooperation on antitrust policy "will continue to be difficult–and may be impossible…"[9] The last two decades demonstrated that international antitrust remains an "impossible dream."[10] Indeed, how can countries restrain themselves through principles of international antitrust when they have all the incentives to free-ride and distort competition with subsidies and favorable treatment to domestic companies while subjecting foreign companies to less favorable market conditions, in other words to engage in protectionism?

Antitrust policy and enforcement fundamentally remain subject to each country's political desire to regulate and intervene on free markets according to its own political and economic environment. Not only capitalisms vary,[11] but antitrust policy and enforcement will vary according across periods of time within a specific country.

For instance, in the U.S., antitrust laws were unenforced during World War II, enforcement varies depending on the relative importance of populism at any given time, and some sectors expressly enjoy antitrust exemption to pursue industrial policy objectives or other sectoral objectives. Similarly, international antitrust appears impossible when countries shift from communism to market-based economies. In other words, beyond international disagreements on how to regulate market economies, the internal dynamics and economic change within countries render international antitrust less feasible.

Therefore, antitrust cooperation faces a dual obstacle: (i) the inevitable economic changes within societies, thus leading to changes in domestic antitrust policies, and (ii) the legitimate desire for countries to elaborate industrial policies, thus leading to distortions of competition between domestic firms with foreign companies.

Be that as it may, international antitrust remains necessary. Companies strive for greater legal certainty and quicker regulatory processes. When they engage in mergers with extraterritorial effects, not only cooperation and consistency across jurisdictions would help and avoid the conundrums such as the *Illumina/Grail* drama, but it would also reduce transaction costs with speedier decision-making processes. Also, the lack of international antitrust facilitates the formation and pervasiveness of international cartels which decrease global welfare and harm consumers across the globe due to the absence of effective tools to remedy these situations.

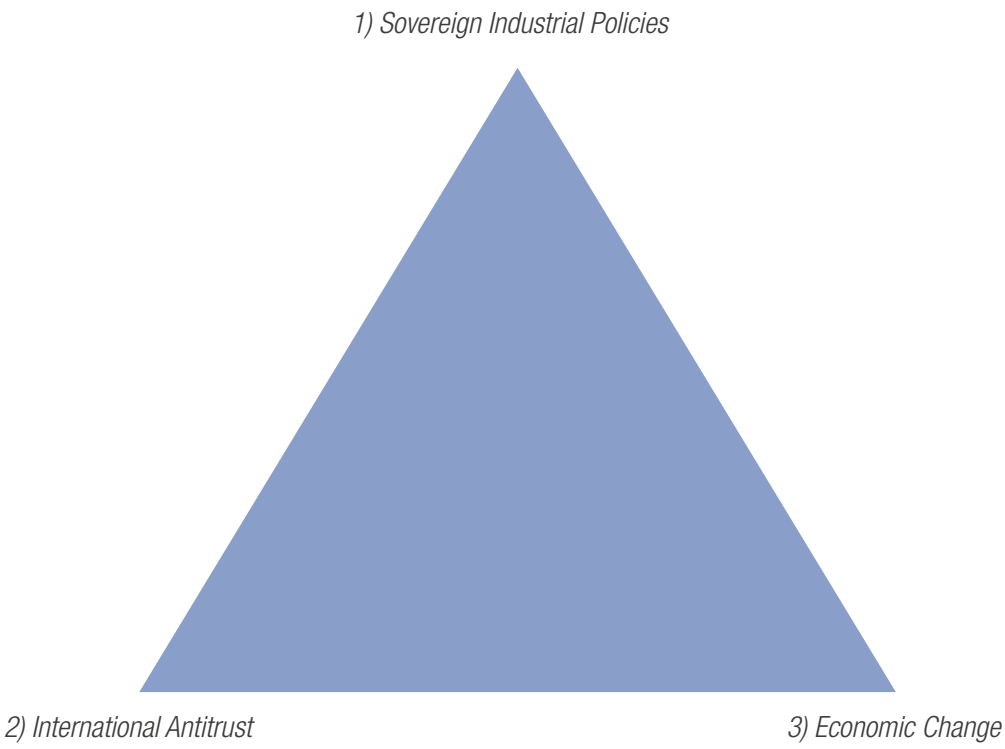
Though beneficial, international antitrust remains an impossibility. The impossibility theorem of international antitrust rests upon three decisive factors which cannot come together at any point in time:

9 Andrew T. Guzman, "Is International Antitrust Possible?" 73 *New York University Law Review*, 1501-1548, 1548 (1998). See also, Andrew Guzman, "The Case for International Antitrust," 22 *Berkeley Journal of International Law*, 355-374 (2004).

10 Diane P. Wood, "The Impossible Dream: Real International Antitrust," 12 *University of Chicago Legal Forum*, 277-313 (1992) (noting that "the search for either harmonization of national competition law rules or the establishment of any kind of supranational procedural or substantive regime seems to be an impossible dream.")

11 Peter A. Hall, David Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, (Oxford University Press, 2001).

Figure 1: The Impossibility Theorem of International Antitrust



There cannot be international antitrust if countries seek sovereign industrial policies and societies face economic changes. There can nevertheless be sovereign industrial policies (1) with economic changes (3): Countries would individually adapt and adjust their market regulations and economic incentives in light of changing economic circumstances. For example, the recent crackdown by China on its domestic tech companies who were economically successful but represented a political threat to the Chinese Communist Party illustrates an industrial policy reacting to economic changes without international cooperation despite obvious extraterritorial effects.

Also, there can be international antitrust (2) with economic changes (3): By giving up sovereign industrial policies, countries can vigorously enforce cooperation in antitrust whilst reacting to economic changes. The prime example here is the European Union's competition policy which effectively prevents Member States to independently decide their market regulations and to carry on their national industrial policies without stringent and corseted European cooperation for the sake of a fair and undistorted competition within the European Union.

Finally, there could theoretically be international antitrust (2) with sovereign industrial policies (1) if no economic change would ever take place – obviously a quasi-impossible condition. International antitrust would take place in a "frozen" state of affairs where economic conditions remain forever preserved through heavy-handed regulations and subsidies that minimize any potential economic changes. This situation would be close to the economic arrangements which took place within the U.S.S.R. when each semi-sovereign Republic had their own industrial policies coupled with strong economic cooperation while minimizing economic changes and pressures from outside the U.S.S.R. This possibility comes at a prohibitive cost for taxpayers and at a considerable effort to ignore the dynamics of the free markets.

Consequently, because each of these three scenarios is impossible to achieve globally, international antitrust remains trapped in its "impossibility theorem:" Two sides of the above triangle are always achievable, but it is impossible to have the three sides of the triangle altogether.

International antitrust's impossibility theorem in practice materializes by the fact that international cooperation between antitrust agencies remains superficial: It exclusively focuses on procedural, information-sharing cooperation without substantive policy coordination.[12] Moreover, any substantive attempt to international cooperation between antitrust agencies will inevitably lead to soft law instruments which, absent any legal binding effect, fall short of any tangible consequences. Indeed, the OECD, the G7, the International Competition Network ("ICN"), and the

12 See Andrew Guzman, "The Case for International Antitrust," 22 *Berkeley Journal of International Law*, 355-374 (2004) ("cooperation must extend beyond the current set of information-sharing agreements and bilateral negotiations to include substantive antitrust issues.").

Working Group on the Interaction between Trade and Competition ("WGTCP") of the World Trade Organization ("WTO") are powerless bodies and institutions when it comes to effectively embody international antitrust. The impossibility theorem of international antitrust appears inescapable.

II. A TREND: THE INTERNATIONALIZATION OF PRECAUTIONARY ANTITRUST

The prospect of international antitrust is further rendered impossible because of a recent trend to complement, if not substitute, antitrust policy and enforcement as an *ex post* adjudication mechanism with a shift towards ex ante regulatory rules of competition. Claiming that antitrust enforcement is too slow in light of highly dynamic markets and that the outcomes of enforcement actions are too uncertain in courts, antitrust agencies and government started to suggest the adoption of laws and regulations which would regulate and prohibit some practices especially present in the digital industry.

This shift from *ex post* antitrust to *ex ante* antitrust reveals a shift towards regulating innovation: The *ex ante* rules of competition often prohibit practices which are pro-competitive and not anti-competitive. Importantly, these rules regulate highly innovative companies and practices, thereby increasing considerably the legal risks for entrepreneurs to embark in disruptive, novel practices with innovative products and services. For instance, a company deemed to be a "gatekeeper" who wishes to enter a new market may successfully do so, but would therefore be considered to have "tipped the market," leading regulators to force this company to share data and grant access to strategic proprietary assets. The prospect of sharing assets with rivals as a result of entrepreneurial efforts will deter the company to enter the new market on the first place.

To illustrate, as Facebook (Meta) enters the metaverse, its success may lead regulators to force the company into sharing data and access with rivals who have not invested in entering the metaverse and in innovating.[13] Consequently, the level of investments may decline as the company anticipates the regulatory obligations to share strategic assets with rivals in the name of "fair competition."

The legal risks created by *ex ante* antitrust are in reality not a bug but a feature of the current trend of antitrust globally. These legal risks are part of the precautionary approach regulators have increasingly adopted when it comes to highly dynamic and innovative markets such as digital markets. Indeed, the elements of the precautionary principle find a welcoming environment in the *ex ante* regulation of competition.[14]

According to the precautionary logic, because of the scientific uncertainty, antitrust regulators ought to intervene to stop the unproven, yet hypothetical, risk of irreversible harm caused to the structure of the markets, unless the market actors can demonstrate the absence of risks. The foundational elements of the precautionary principle are found as justification for ex ante antitrust: scientific uncertainty, need to regulate in absence of harm, hypothetical risks of irreversible harm, and the reversed burden of proof are all elements of the precautionary principle which constitute rationales for the passage of the EU's Digital Markets Act, but also for the FTC's rulemaking on unfair methods of competition, and other U.S. antitrust bills. Throughout the world, the internationalization of the "precautionary antitrust"–or the pervasiveness of the precautionary principle in antitrust especially regarding digital markets–appears to be an underlying trend.[15]

But the on-going trend of the internationalization of precautionary antitrust further renders impossible international antitrust. First, it demotes antitrust since the alleged slowness and ineffectiveness of traditional antitrust tools justify the adoption of precautionary antitrust. As traditional antitrust (i.e. adjudicative antitrust) becomes secondary, international antitrust itself becomes secondary: The regulation of market competition increasingly takes place through legislation rather than through enforcement actions.

Second, the unilateral adoption of precautionary antitrust prevents the emergence of international antitrust. For instance, as the EU adopted the Digital Markets Act ("DMA"), but the U.S. has not adopted antitrust bills, transatlantic discussions over antitrust cooperation and coordination appear increasingly impossible since the EU's DMA will remain outside the scope of the discussions whereas it will be the leading text regulating competition in the digital industry. How can international antitrust ever come to fruition if transatlantic antitrust alone is out-of-reach due to regulatory divergence?

13 Aurelien Portuese, "Antitrust and the Internet of Things: Addressing the market tipping fallacy," *Concurrences,* N.3-2021, 28-34, https://www2.itif.org/2021-ai-competition-law-concurrences-no3.pdf.

14 Aurelien Portuese, "Precautionary Antitrust: A Precautionary Tale in European Competition Policy" in Klaus Mathis and Avishalom Tor (Eds.) *Law and Economics of Regulation,* Economic Analysis of Law in European Legal Scholarship, 203-231 (2021).

15 Aurelien Portuese, "European Competition Enforcement and the Digital Economy: The Birthplace of Precautionary Antitrust," in Joshua D. Wright, Douglas H. Ginsburg, (Eds.) *Report on the Digital Economy*, Global Antitrust Institute, 597-651 (2020); Aurelien Portuese, "The Digital Markets Act: European Precautionary Antitrust," (ITIF Report, May 2021), https://itif.org/publications/2021/05/24/digital-markets-act-european-precautionary-antitrust/; Aurelien Portuese, "American Precautionary Antitrust: Unrestrained FTC Rulemaking Authority," (ITIF Report, January 2022); Aurelien Portuese, "The Digital Markets Act: Precaution Over Innovation," Epicenter, June 2021, http://www.epicenternetwork.eu/wp-content/uploads/2021/06/Digital-Markets-Act-precaution-over-innovation-final.pdf.

Third, the internationalization process of precautionary antitrust itself constitutes a formidable obstacle to international antitrust as a global and coherent policy. As precautionary antitrust seldom internationalizes, countries adopt ex ante rules of competition, but approaches and content differ substantially. In other words, how can antitrust agencies effectively coordinate their approaches and enforcement policies if most of traditional antitrust is stripped out in favor of precautionary antitrust for major economies whereas most of the developing economies have not embarked in the trend of adopting ex ante rules of antitrust? International antitrust suffers from the increasing divide between developed countries and developing countries when it comes to precautionary antitrust: If the former led the path to precautionary antitrust, the latter mostly have so far remained absent in such process, thereby increasingly the regulatory obstacles for the advent of international antitrust.

Precautionary antitrust is largely detrimental – because it instills a precautionary logic and increase legal risks to entrepreneurs who operate in highly dynamic markets and who strive to offer innovative products and services. Precautionary antitrust is foremost costly because it turns risk-loving entrepreneurs into risk-averse managers, a fundamental mismatch with the disruptive process of capitalism. But precautionary antitrust is also detrimental for a reason that has largely been overlooked so far: Regulatory divergence leads to a less credible advent of international antitrust at the expense of global welfare and consumers across the globe.

III. A (POSSIBLE) SOLUTION: THE REACTIVATION OF THE WTO'S WORKING GROUP

International antitrust, however difficult and impossible, can only take place in a multilateral, global forum which has the capacity to issue legally binding rules for countries to effectively enforce them and which has a dispute resolution mechanism. In that regard, only the WTO has such characteristics. Indeed, the WTO is a competent and effective multilateral institution when it comes to market regulation and cooperation.

The only direct involvement of the WTO in antitrust matters materialized in 1996. The Working Group on the Interaction between the Trade and Competition Policy ("WGTCP")–or Singapore Group – is of particular relevance. The Ministerial Conference which took place in Singapore in 1996 established the WGTCP. Paragraph 20 of the declaration stated that the WTO establishes a "working group to study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework."[16]

The WGTCP started working on matters such as transparency; non-discrimination; procedural fairness; voluntary cooperation; capacity building; and limitation of international cartels.[17] The WTO's Working Group was obviously not a sort of international antitrust authority.[18] The decade of the 90s with its enthusiastic embrace of free-market principles across the world led to a considerable debate regarding the prospect of the substantive harmonization of competition principles in what should have become an international antitrust regime.[19]

As an institutional response to this momentum, the WTO effectively acted in the direction towards international antitrust. For instance, paragraph 25 of the ministerial declaration issued after the Doha meeting of the WTO called for the inclusion within the WTO of "core principles, including transparency, nondiscrimination and procedural fairness, and provisions ... [prohibiting] hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building."[20]

However, despite such efforts, hardly any agreement at the WTO level has addressed competition law matters in order to substantively harmonize antitrust regimes across the globe.[21] Worse, on August 1, 2004, the WTO's General Council decided that the issue of competition will

16 World Trade Organization, Ministerial Declaration, WT/MIN(96)/DEC (Dec. 18, 1996), 20.

17 Maher M. Dabbah, *International and Comparative Competition Law*, (Cambridge UK: Cambridge University Press, 2010):123.

18 See John O. McGinnis, "The Political Economy of International Antitrust Harmonization," 45 *William & Mary Law Review*, 549-594 (2003)

19 See, for instance, Eleanor M. Fox, Toward World Antitrust and Market Access, 91 American Journal of International Law, 1-25 (1997); Spencer Weber Waller, "The Internationalization of Antitrust Enforcement," *Boston University Law Review*, 343-404 (1997) ("the decline of the regulatory power of the nation state has not led to a shift of antitrust law or its enforcement to the international level."); Andrew T. Guzman, "Is International Antitrust Possible?" 73 *New York University Law Review*, 1501-1548, 1548 (1998); Andrew Guzman, "The Case for International Antitrust," 22 *Berkeley Journal of International Law*, 355-374 (2004); Diane P. Wood, "The Impossible Dream: Real International Antitrust," 12 *University of Chicago Legal Forum*, 277-313 (1992).

20 World Trade Organization, Ministerial Declaration, WT/MIN(01YDEC/1 (Nov. 20, 2001), 41 I.L.M. 746 (2001) (noting that "specific problems have raised competition law to the level of a world issue, possibly to be addressed in the context of the World Trade Organization (WTO)").

21 Maher M. Dabbah, *International and Comparative Competition Law*, (Cambridge UK: Cambridge University Press, 2010):121.

no longer be "part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round."[22] The website of the WTO states that "the Working Group is currently inactive."[23]

In other words, the WTO is no longer interested in or working on bringing together antitrust regimes. The prospect of international antitrust, already illusory, has since become a chimera. It is nevertheless time to re-active the WGTCP.[24] A recent call from multiple think tanks argued that the:

> *"WTO urgently needs to re-activate the WGTCP in order to design multilateral, legally binding principles within an adequate institutional framework…A WTO-led global antitrust framework should not only lay down multilateral principles fostering coordination among antitrust agencies but should also articulate domestic principles fostering convergence of antitrust assessments….The work of the International Competition Network and the Competition Division of the OECD are also essential and necessary."*[25]

Because the Singapore Group had made "a major contribution to the initiation of a debate on a WTO competition law agenda,"[26] it is necessary to re-activate the WGTCP in order to address distortion of global competition through mercantilist and protectionist policies at the expense of global welfare. This work can potentially (and ideally) lead to a multilateral agreement following other work in areas with competition law implications such as the Telecommunications Reference Paper on Regulatory Principles of the Negotiating Group on Basic Telecommunications,[27] the General Agreement on Trade in Services,[28] the General Agreement on Tariffs and Trade, the Agreement on Trade-Related Investment Measures,[29] the Trade-Related Aspects of Intellectual Property Rights,[30] the Agreement on Government Procurement, and the Agreement on Technical Barriers to Trade.

Of course, the obstacles for the coming to the fore of international antitrust based on substantive harmonization of competition principles are herculean. Not only domestic changes of antitrust policies, as illustrated by the recent emergence of antitrust populism, complicate international convergence, but also the internationalization of precautionary antitrust where *ex ante* rules of competition take precedence over traditional antitrust principles further make international antitrust an impossibility rather than a reality. And yet, institutional efforts need to be made despite difficulties – with the first and most straightforward effort being the re-activation of the WTO's WGTCP, to lay the ground for a potential multilateral agreement on competition matters. In that regard, the G7 nations, and more generally the OECD Competition Division can play a key role in being instrumental for garnering a momentum among nations to better use the WTO capabilities to reach what could come close to the "impossible dream" of international antitrust.[31]

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22 World Trade Organization, Doha Work Programme, Decision Adopted by the General Council on 1 August 2004, WT/L/579, August 2, 2004.

23 World Trade Organization, Working Group on the Interaction between Trade and Competition Policy (WGTCP)–History, Mandates, and Decisions, https://www.wto.org/english/tratop_e/comp_e/history_e.htm#singapore (Accessed on September 22 2022).

24 See, for example, Global Trade and Innovation Policy Alliance, "Principles and a Framework of Antitrust for Global Innovation," (ITIF June 2021), https://www2.itif.org/2021-gtipa-principles-global-dynamic-antitrust.pdf

25 *Ibid*, 2. See also ITIF, "A Vision for International Antitrust at the WTO," (ITIF Event, June 30, 2021), https://itif.org/events/2021/06/30/vision-international-antitrust-wto/

26 Maher M. Dabbah, *International and Comparative Competition Law*, (Cambridge UK: Cambridge University Press, 2010):123.

27 Section 1.1 of the Fourth Protocol to the General Agreement on Trade in Services (GATS).

28 See Articles VIII, IX, and IX:2.

29 See Article 9.

30 See Article 41 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS).

31 See Diane P. Wood, "The Impossible Dream: Real International Antitrust," 12 *University of Chicago Legal Forum*, 277-313 (1992).

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