IJNRD.ORG ISSN : 2456-4184
INTERNATIONAL JOURNAL OF NOVEL RESEARCH AND DEVELOPMENT (IJNRD) | IJNRD.ORG
An International Open Access, Peer-reviewed, Refereed Journal

EU COMPETITION LAW AND EXTRATERRITORIAL JURISDICTION

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Abstract: This legal research paper examines the European Union's approach to extraterritorial jurisdiction within the domain of competition law, with a specific focus on the EU's strategic use of market access as a means of enforcing its regulations globally, commonly known as "The Brussels Effect." The study analyzes the legal foundations and constraints governing the application of EU competition laws beyond its borders, paying particular attention to the ongoing review of the Intel case by the Court of Justice of the European Union (CJEU).

The paper investigates how the EU has adapted its policies to extend its regulatory influence beyond its territorial boundaries, leveraging territorial extension to impact international and third-country legal frameworks. This approach empowers the EU not only to regulate the operations of foreign companies that affect its internal market but also to influence and shape global regulatory standards.

By critically examining the CJEU's decision in the Intel case, the research underscores the significance of the effects doctrine and its implications for global trade and jurisdiction. It offers a nuanced interpretation of the extraterritorial reach of EU competition laws, shedding light on the intricate relationship between market access, competition enforcement, and the EU's role in shaping international regulatory norms.

Keywords: *EU Competition Law, Extraterritorial Jurisdiction, Brussels Effect, Intel Case, Global Regulatory Standards.*

INTRODUCTION

Law and political scholars, as well as media critics, have documented the European Union's ascent to prominence in international regulation. By utilizing market access as a negotiation tactic, the EU has been effective in "exporting" it's usually harsh regulations to nations outside the EU. The EU is said to be taking part in 'unilateral regulatory globalization,'[1] often known as "The Brussels Effect." The EU is resembling a hegemonic, unilateralist organization, with regulatory movement moving solely in one direction, from Europe. The shift in EU law's perspective on extraterritoriality has occurred in tandem with the EU's rise as a global regulatory authority. According to the argument, although the passage of extraterritorial laws was originally intended to irritate the EU, the EU has grown to tolerate and even practice extraterritoriality in its name. According to some, as a result of this shift in thinking, the EU's policies have become more expansive in their use of extraterritoriality. According to one theory, the European Union's rise to prominence as a major economic power has made it less concerned about being "overpowered" by the US and more eager to exert influence over nations whose actions may have an impact on the EU market. This paper examines the effects of the EU's global regulatory authority on the contours and scope of the EU's international legal applicability in light of these changes. The paper makes the case that, even though it rarely enacts extraterritorial laws, the EU frequently uses a mechanism that could be referred to as "territorial extension.[2] The European Union (EU) is able to control activities that are not concentrated within its own territory by using territorial extension to exert influence over the scope and content of international and third-country law. As a result, the design of certain legislative instruments that the EU has authorized frequently takes into account the EU's global regulatory authority".[3]

This article also looks into the issues surrounding the legal foundation and restrictions for the extraterritorial application of EU competition laws. The Court of Justice is currently re-examining this case in light of the appeal against the General Court's decision in the Intel case(ECJ). Despite the General Court's (GC) acknowledgment of the qualified effects method and the territoriality idea as additional underpinnings for the EU's jurisdiction, the ECJ has thus far been reticent to issue any definitive rulings in favor of this latter strategy. Given that the AG has already advised in his opinion submitted to the ECJ in the Intel case that the ECJ adopt the GC's finding on this issue.

[1] . "See, for a focus upon the multilateralization of EU norms, R. Daniel Keleman & David Vogel, Trading Places: The US and the EU in International Environmental Politics, 43 COMP. POL. STUDIES 427 (2010)"

[2] . "This term is taken from Judith Resnik, Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry 115 YALE L.J. 1564 (2006)".

[3] "Bradford, supra note 1. This standard setting role is presented as being of central importance in driving negotiations for an EU-U.S. Trade and Investment Partnership agreement".

STATEMENT OF PROBLEM

With the beginning of the Brussels effect, the idea of extraterritoriality and globalization have begun to mend into the EU market. This was always seen as a contentious combination due to the image of the EU being a unilateralist, hegemonic, and regulatory body; however, this perception has begun to change as a result of the Brussels effect. The primary goal of the European Union has never been to be conquered by nations such as the United States of America; however, in recent years, that focus has shifted to one of cultivating international relations and expanding the EU market. This raises the question of whether or not the shift in EU perspectives regarding extraterritoriality have had any impact on the organization's foreign policy, and if so, how territorial expansion has taken place within the EU.

RESEARCH QUESTIONS

1. How can the "foundation of EU competition law" be resolved so as to adjudicate the matters of territorial jurisdiction, and how has the Intel case changed the minds of courts and judges regarding the possibility of EU competition laws?
2. How has the EU jurisprudence in matter of competition law developed through recent cases and is there any chance that the general court may adopt the effect-based doctrine so as to have a common ground between US and EU in terms of territorial jurisdiction?
3. The protection of a "system of undistorted competition within the internal market is one of the core elements of EU law that institutionalizes economic integration. The addressees of the prohibitions regarding restraints of competition such as Articles 101 and 102 TFEU are "undertakings ". Hence the question arises whether such undertakings must be located within the EU, whether at least their anticompetitive conduct must be completed within the EU or whether it is sufficient that the effects of restraints of competition are felt on the internal market and the ECJ has still not come to a fully satisfactory conclusion.

RESEARCH OBJECTIVES

In light of recent discussions regarding the EU's emergence as a major player in international regulation, this paper analyses the global application of EU legislation. Its findings show that the EU rarely passes extraterritorial law, refuting previous claims to the contrary. However, in order to gain regulatory traction over activities that occur outside of the home, the EU frequently uses a legislative strategy that I refer to as territorial extension. This method not only allows the EU to regulate activities that are not restricted to its borders but also gives it the power to shape the structure and provisions of international and third-party legal systems.

RESEARCH METHODOLOGY

The study is doctrinal in nature to meet the objectives enlisted. Primary Sources includes questionnaire responses from respondents, legislations, etc. Secondary sources involve books, reports from research organizations, journal articles, newspaper reports, etc. In order to present the study, researcher has used the Bluebook: A 3 Uniform System of Citation (19h. ed.) as it is the most convenient and reliable citation method to accredit the primary and secondary sources in legal research.

LIMITATION/SCOPE OF THE STUDY

The purpose of this study is to investigate the link between extraterritoriality and the application of EU competition legislation. The idea of impacts was developed in the context of US antitrust law more than a half-century ago, but it wasn't until recently that the ECJ confirmed such an approach for establishing the jurisdiction of EU competition law in its Intel case. The latter judgement, on the other hand, has been challenged since the ECJ investigated Intel's acts in their whole, looking at several types of abusive behaviour. As a result, the Court's decision took into account Intel's behaviour in the United States and Lenovo's behaviour in China, which appears to have a shaky relationship with the EU/EEA. As a result, the purpose of this essay is to provide a critical analysis of the ECJ's decision, taking into account both the General Court's first-instance decision and the AG's opinion.

LITERATURE REVIEW

BOOKS

1. **"Extraterritoriality and the Global Reach of EU Competition Law by Ioannis Lianos and Valentine Korah.** This book provides a detailed analysis of the extraterritorial reach of EU competition law, and explores the legal and policy issues that arise in applying competition law to global business activities".
2. **"Extraterritoriality and Antitrust: Addressing International Anticompetitive Conduct by Andrew Guzman.** This book provides a comprehensive examination of the extraterritorial jurisdiction of antitrust law, including EU competition law. It explores the legal, economic, and policy issues that arise in applying antitrust law to global business activities, and proposes solutions for addressing cross-border anticompetitive conduct."
3. **"Global Competition: Law, Markets, and Globalization by David Gerber.** This book provides a broader overview of global competition law and policy, including the role of the EU in shaping global competition norms. It explores the legal and policy issues that arise in regulating cross-border business activities, and provides a comparative analysis of different approaches to competition law and policy around the world."
4. **"The Competition Law of the European Union in Comparative Perspective: Cases and Materials by Francis Snyder.** This book provides a detailed analysis of EU competition law, including its extraterritorial reach. It includes a range of case studies and materials that illustrate the application of EU competition law to cross-border business activities, and provides a comparative perspective on competition law and policy in different jurisdictions".

RESEARCH ARTICLES

- **"The Application of EU Competition Law Beyond EU Borders by Thomas Janssens and Wouter Devroe.** This article examines the extraterritorial jurisdiction of EU competition law, and explores the legal basis for the application of EU competition law to non-EU entities".
- **"The Extraterritorial Application of EU Competition Law: A Comparative Perspective by Maher Dabbah.** This article provides a comparative analysis of the extraterritorial application of EU competition law, and explores the challenges and limitations of enforcing competition law beyond the EU's borders".
- **"The Extraterritorial Reach of EU Competition Law: Limits and Challenges by Jorge L. Contreras.** This article examines the extraterritorial jurisdiction of EU competition law, and explores the legal and policy issues that arise in applying competition law to global business activities".
- **"Extraterritorial Application of EU Competition Law: Is It Time to Reconsider? by Nicola de Luca.** This article examines the extraterritorial jurisdiction of EU competition law and argues that it is time to reconsider the current approach. The author argues that the extraterritorial jurisdiction of EU competition law creates uncertainty for businesses and may lead to conflicts with other jurisdictions. The article suggests that the EU should adopt a more restrained approach to extraterritorial jurisdiction and focus on cooperation with other jurisdictions".
- **"Extraterritoriality in Competition Law: European Perspectives by Ioannis Lianos and Eleni Tsingou.** This article provides an overview of the extraterritorial jurisdiction of EU competition law and examines the challenges that arise in applying competition law to global business activities. The article argues that the EU's extraterritorial jurisdiction is a necessary tool for protecting competition in the global marketplace, but that it must be applied in a way that respects the sovereignty of other jurisdictions".
- **"EU Competition Law and Extraterritoriality: The Application of Article 101 TFEU to Non-EU Conduct by Robert O'Donoghue.** This article provides a detailed analysis of the extraterritorial application of Article 101 TFEU, which prohibits anticompetitive agreements. The article examines the conditions for applying Article 101 TFEU to non-EU conduct and explores the challenges of enforcing competition law in a global context. The article concludes that the EU's extraterritorial jurisdiction is an important tool for protecting competition in the global marketplace, but that it must be applied in a way that respects the sovereignty of other jurisdictions".

THE BRUSSEL'S EFFECT

The transformation in the stance of EU law on extraterritoriality has occurred concurrently with the EU's rise as a worldwide regulatory authority. The theory contends that, whereas the EU previously saw extraterritoriality as the exclusive domain of the US and as provoking the EU's wrath, this view has since shifted, and the EU now sees it as a phenomenon that is both accepted by the EU and increasingly exercised in its name. The EU's position on extraterritoriality is believed to have shifted in a number of policy areas. There are likely several factors at work here, but one is that the European Union is less concerned about its global economic standing.[4]

The "Brussels Effect" refers to the phenomenon where the European Union (EU) has been able to shape global regulatory standards and norms by using its market power to influence the behaviour of firms operating in or seeking access to the EU market. This effect has also been seen in the area of competition law and its extra-territorial jurisdiction.

EU competition law gives the EU the power to regulate and control anti-competitive behaviour by companies within the EU. However, the EU has also used its regulatory power to extend its competition law beyond its borders. This has been done through a variety of means, including the application of the EU's competition law to companies operating outside the EU, as well as the use of non-binding guidelines and best practices that are adopted by companies outside the EU to ensure compliance with EU competition law .

The Brussels Effect has helped EU competition law in extra-territorial jurisdiction by creating a global expectation that companies must comply with EU competition law if they want to do business with or in the EU. This has led to companies voluntarily adopting EU competition law standards, even if they are not legally required to do so. As a result, the EU has been able to regulate anti-competitive behaviour beyond its borders and enforce its competition law against non-EU companies.

In addition, the EU has used its market power to negotiate agreements with other countries that include provisions on competition law and extra-territorial jurisdiction. For example, the EU has entered into free trade agreements with several countries that contain provisions on competition law and enforcement[5]. These agreements require the signatories to comply with EU competition law and provide for cooperation between the EU and the signatories in the enforcement of competition law.

Brussels Effect has helped EU competition law in extra-territorial jurisdiction with specific case laws:

1. Intel Case[6]: In the Intel case, the European Commission found that "Intel had engaged in anti-competitive behaviour by giving rebates to computer manufacturers who agreed to use Intel's microprocessors exclusively. The Commission fined Intel €1.06 billion for its anti-competitive conduct". The case is an example of the Brussels Effect because Intel is a US-based company, but the European Commission applied EU competition law to it. The Commission's decision has had a global impact, as other countries have taken similar actions against Intel.
2. Google Case[7]: In the Google case, "the European Commission found that Google had abused its dominant position in the search engine market by giving preferential treatment to its own comparison-shopping service. The Commission fined Google €2.4 billion for its anti-competitive conduct". The case is an example of the Brussels Effect because Google is a US-based company, but the European Commission applied EU competition law to it. The Commission's decision has had a global impact, as other countries have taken similar actions against Google.

[4] Hannah L. Buxbaum, Territory, Territoriality and the Resolution of Jurisdictional Conflict, 57 AM. J. COMP. L. 631 at 635 (2009) .

[5] "Christopher Brummer, Territoriality as a Regulatory Technique: Notes from the Financial Crisis 79 U.CIN. L. REV. 499, at 108 (2010)".

[6] "Intel Corporation v Commission, T-286/09, EU:T:2014:547".

[7] "Google LLC, v. European Commission, T-612/17, EU:T:2019:356".

3. Qualcomm Case[8]: In the Qualcomm case, "the European Commission found that Qualcomm had abused its dominant position in the market for baseband chipsets by paying Apple to use Qualcomm chipsets exclusively. The Commission fined Qualcomm €997 million for its anti-competitive conduct". The case is an example of the Brussels Effect because Qualcomm is a US-based company, but the European Commission applied EU competition law to it. The Commission's decision has had a global impact, as other countries have taken similar actions against Qualcomm.

These cases demonstrate how the Brussels Effect has helped EU competition law in extra-territorial jurisdiction.

IMPACT ON THE JURISIDICTION OF EU COMPETITION LAW AFTER THE INTEL CASE JUDGEMENT

The United States was a forerunner in inventing the effects doctrine, which is used to establish jurisdiction over foreign persons "[9]whose conduct occurs beyond the borders of the enforcing State, but has an effect within that State." More than half a century after it was first used in US antitrust law, the ECJ finally confirmed that it is a valid means of determining jurisdiction in EU competition law. This is because the Court has been actively seeking and developing novel techniques and concepts to handle new issues in the area of extraterritorial jurisdiction.

The Dyestuffs case was an early test for the Court's capacity to apply competition restrictions enshrined in the Treaty and its determination of extraterritoriality. Using the "doctrine of one economic entity,"[10] two or more people can operate a firm as though it were a single entity. As evidenced by the Dyestuffs litigation, European dyestuff producers tried a price-hike conspiracy. In those days, Imperial Chemical Industries Ltd. ("ICI") wasn't based in the European Union (nor is it now). However, it did have businesses established in Europe that coordinated product delivery and other operations within the European Union's single market.

In the Dyestuffs conflict, several European companies tried to raise prices at the same time. Imperial Chemical Industries Ltd. ("ICI"), the culpable British firm, was not located within the EU at the time (nor is it now). As a result, it set up local branches around the EU to manage local sales and assure uniformity across the common market. Because the subsidiaries "lacked actual autonomy in selecting [their] market course of action," the parent was responsible for the behavior and acts of the subsidiaries that comprised the economic unit with the parent. In doing so, British ICI and its affiliates were able to satisfy the enterprise criteria of the Treaty's competition laws and be treated as a single economic organization.

CONCLUSION

Given these factors, the author believes the ECJ's decision in the Intel case was appropriate. For starters, when dealing with issues of extraterritorial reach and jurisdictional context, it makes sense to employ the concept of conduct as part of a larger approach. When deciding whether or not EU competition regulations apply, it seems appropriate to take into account an enterprise's behaviour as a whole, that is, to combine several sets of behaviour that achieve the same purpose. One could argue that not implementing such a strategy would artificially partition a company's operations, which by their very definition may involve multiple interrelated practises or various parts of the same overarching strategy.

Furthermore, this interpretation of the ECJ's argument appears to be consistent: It establishes a uniform criterion for analysing an enterprise's relevant activity for the purposes of establishing jurisdiction under competition statutes.

When seen through the lens of "Article 102 TFEU and the effect on commerce as a criteria, the acceptance of an effects doctrine approach to establishing EU jurisdiction is appropriate within the context of the competition requirements". Furthermore, the qualified impacts test appears to provide a "jurisdictional solution" to problems caused by the globalization of trade and commerce. To rephrase, it appears that problems posed by globalisation can be overcome using an approach based on the evaluation of actual results. Therefore, the Intel decision could be interpreted as suggesting that new problems call for different ways of thinking about old ones.

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