

The Follower Phenomenon: Implications for the Design of Monopolization Rules in a Global Economy

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Abstract

Antitrust laws have proliferated around the world. New laws are oftentimes modeled, at least in part, on those of jurisdictions with established antitrust regimes, a trend we call “the follower phenomenon.” Follower behavior might involve a transplant of a legal rule, its interpretation, or both.

This article analyzes the main causes of the follower phenomenon and its welfare effects, both on the following jurisdiction and on the followed one. It argues that the proliferation of one's antitrust prohibitions can sometimes act as a boomerang, negatively affecting the welfare of the followed jurisdiction as well as third jurisdictions. This boomerang effect can result from three main causes: (a) the limited ability of the followed jurisdiction's domestic firms to monopolize or cartelize foreign markets due to stricter antitrust policies of the following jurisdiction based on a correct following of the followed jurisdiction's antitrust prohibitions; (b) the abandonment of neutral or procompetitive conduct by firms based in the followed jurisdiction (or trading in it) due, for example, to increased costs resulting from parallel and often similar regulation in several following jurisdictions; and (c) negative externalities resulting from increased error costs due, for example, to the misapplication of the followed jurisdiction's complex rules in following jurisdictions with limited institutional capabilities.

Based on the above findings, we then propose ways for the followed jurisdiction, as well as for other jurisdictions, to increase the positive externalities and limit the negative externalities resulting from the follower phenomenon. We suggest that under certain circumstances the followed jurisdiction could anticipate the follower phenomenon and modify its choice of optimal rule to account for the boomerang effect. Less extreme methods are also explored, such as aiding and directing less experienced jurisdictions in the correct application of their antitrust laws.