

THE INTERNATIONAL COMPETITION NETWORK AND ITS LEGITIMACY

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Ever since Judge Learned Hand has rendered his judgment in the Alcoa-case have competition law enforcement authorities struggled with the question to what extent they could take jurisdiction over competition law cases triggering by foreign companies. Originally, scholars were trying to limit the ambit of the competition law enforcement authorities within strict jurisdictional principles. When it became obvious that these authorities were not confining their jurisdiction to these principles, basically driven by the economic reality that foreign business behavior could affect the domestic markets, attempts were undertaken to set up an international competition law regime. These attempts failed, leaving bilateral cooperation as the only option to deal with transnational business behavior affecting competition in the market.

The failure to deal in a proper way with transnational business behavior affecting competition inspired the United States competition law enforcement authority to advocate for the creation of an informal network of enforcement authorities. A positive response of the other major jurisdictions having a competition law meant the start of what is now currently known as the International Competition Network (ICN). The aim of the ICN is to gather information on how to properly deal with transnational and national competition law enforcement and formulate best practices. In this capacity, the ICN has been able to exert influence on the development of competition law all over the world.

From the failure of an international competition law regime and the informal character of the network, it is obvious that the influence of the ICN on competition law is not following a traditional law making approach. This paper will therefore look into the issue of whether the activities of the ICN can be legitimized as an appropriate way of dealing with transnational and national business behavior affecting the competition in markets without having a formal international competition law regime.