

Comments on “Global Antitrust
Enforcement: An Empirical Assessment
of The Influence of Protectionism” by
Pierre Cremieux and Edward Snyder

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My comments can be divided as follows:

- more general observations (some beyond the paper itself)
- observations to the empirical approach in the paper (what if we look at merger data as well?)
- what can we said about the conduct of competition authorities in Chile (looking at a couple of cases)?

More general observations (normative and positive)

- besides the paper positive question...
- are countries more open to free trade (e.g., Chile) less likely to use antitrust enforcement as a protectionist tool?
- has the evolution of antitrust enforcement in a particular country changed overtime as it's become more open?
- do lower trade barriers (i.e., tariffs, quotas) make life easier for competition authorities?
- we see a world of decreasing trade barriers but of increasing fines and fined firms (perhaps just more enforcement)

New theoretical developments

- In “Trade costs and multimarket collusion”, Bond and Syropoulos (2009) find that trade liberalization can be pro-collusive in the neighborhood of unimpeded (i.e., free) trade
- In “International antitrust enforcement and multimarket contact”, Choi and Gerlach (2008) look at international cartels with multinational firms that compete in several geographical markets operating under the jurisdiction of different antitrust authorities

NUMBER OF FIRMS FINED BY JURISDICTION IMPOSING THE FINE AND LOCATION OF FIRM

Location of Firm (headquarter of parent firm)

		US	Europe	Rest of World
Jurisdiction Imposing the Fine	US DoJ (Sherman §1)	89 (A)	38 (D)	43 (G)
	European Union (Article 81)	24 (B)	360 (E)	65 (H)
	US DoJ and European Union	5 (C)	21 (F)	20 (I)

Conditional probability of receiving fine

Location of firm (headquarters of parent company)

US

Europe

Pr(Fined US | Fined EU, Location)

21%

6%

(C)/(B)

(F)/(E)

Pr(Fined EU | Fined US, Location)

6%

55%

(C)/(A)

(F)/(D)

	US	Europe
Pr(Fined US Fined EU, Location)	21% (C)/(B)	6% (F)/(E)
Pr(Fined EU Fined US, Location)	6% (C)/(A)	55% (F)/(D)

Problems with these two tables

- the 89 and 360 figures are contaminated with firms that are totally irrelevant to what we are doing, that is, many firms may be local in scope (e.g., rail roads in the Midwest, electric power companies in the UK, etc).
- the focus should be on firms that have a “foot” (i.e., effect) on both sides of the Atlantic (clearly quadrants B, C, D, F)
- how much in quadrants A and E we don't know but surely less than the current numbers: the 89 figure could be as low as 5 and the 360 as low as 21.

Other empirical observations (1/2)

- “Our review of fines imposed by other national authorities (Chile, Japan and Korea) reveal that their efforts are focused almost exclusively on domestic firms”
- are we controlling for market participation and for “markets potentially problematic”?
- in Chile, for example, many international firms are in natural resource sectors (mining, farm-fishing, etc) or regulated sectors (water, local telecom, etc.) not in supermarkets, department stores, drug stores, advertising industry, etc)
- moreover, the recent “oxygen-collusion” case involved international firms (e.g., Air Liquid, Praxair) with substantial fines (only smaller to Falabella-Paris ones)

Other empirical observations (2/2)

- are competition authorities more hostile towards mergers involving foreigners or locals?
- An emblematic case: General Electric & Honeywell (US aircraft companies) cleared by US DoJ but rejected by EU Commission and later confirmed by EU Court of First Instance (2004)
- WorldCom & Sprint (US long-distance carriers) rejected by both US and EU authorities
- the EU Competition Commission seems to have good amount of data to attempt a test (see table)
- I see no reason for mergers to be any different from anticompetitive agreements or abuse of dominant positions in this respect

21 September 1990 to 31 August
2009

I.) NOTIFICATIONS

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	Total
Number of notified cases	11	64	59	59	95	110	131	168	224	276	330	335	277	211	247	313	356	402	347	150	4165
Cases withdrawn - Phase 1	0	0	3	1	6	4	5	9	5	7	8	8	3	0	3	6	7	5	10	1	91
Cases withdrawn - Phase 2	0	0	0	1	0	0	1	0	4	5	5	4	1	0	2	3	2	2	3	2	35

II.) REFERRALS

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	Total
Art 4(4) request (Form RS)															2	14	13	5	9	6	49
Art 4(4) referral to Member State															2	11	13	5	9	5	45
Art 4(4) partial referral to Member State															0	0	0	1	0	0	1
Art 4(4) refusal of referral															0	0	0	0	0	0	0
Art 4(5) request (Form RS)															20	28	38	51	23	13	173
Art 4(5) referral accepted															16	24	39	50	22	14	165
Art 4(5) refusal of referral															2	0	0	2	0	0	4
Art 22 request	0	0	0	1	0	1	1	1	0	0	0	0	2	1	1	4	4	3	2	0	21
Art 22(3) referral (Art 22. 4 taken in conjunction with article 6 or 8 under Reg. 4064/89)	0	0	0	1	0	1	1	1	0	0	0	0	2	1	1	3	3	2	3	0	19
Art 22(3) refusal of referral																1	1	0	0	0	2
Art 9 request	0	1	1	1	1	0	3	7	4	9	4	9	8	10	4	7	6	3	5	0	83
Art 9.3 partial referral to Member State	0	0	1	0	1	0	0	6	3	2	3	6	7	1	1	3	1	1	2	0	38
Art 9.3 full referral	0	0	0	1	0	0	3	1	1	3	2	1	4	8	2	3	1	1	2	0	33
Art 9.3 refusal of referral	0	1	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	1	0	0	4

III.) FIRST PHASE DECISIONS

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	Total
Art 6.1 (a) out of scope Merger Regulation	2	5	9	4	5	9	6	4	4	1	1	1	1	0	0	0	0	0	0	0	52
Art 6.1 (b) compatible	5	47	43	49	78	90	109	118	196	225	278	299	238	203	220	276	323	368	307	134	3606
Art 6.1(b) compatible, under simplified procedure (figures included in 6.1(b) compatible above)	0	0	0	0	0	0	0	0	0	0	41	141	103	110	138	169	211	238	190	88	1429
Art 6.1 (b) in conjunction with Art 6.2 (compatible w. commitments)	0	3	4	0	2	3	0	2	12	16	26	11	10	11	12	15	13	18	19	8	185

IV.) PHASE II PROCEEDINGS INITIATED

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	Total
Art 6.1 (c)	0	6	4	4	6	7	6	11	11	20	18	21	7	9	8	10	13	15	10	4	190

V.) SECOND PHASE DECISIONS

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	Total
Art 8.1 compatible (8.2 under Reg. 4064/89)	0	1	1	1	2	2	1	1	3	0	3	5	2	2	2	2	4	5	9	0	46
Art 8.2 compatible with commitments	0	3	3	2	2	3	3	7	4	7	12	9	5	6	4	3	6	4	5	3	91
Art 8.3 prohibition	0	1	0	0	1	2	3	1	2	1	2	5	0	0	1	0	0	1	0	0	20
Art 8.4 restore effective competition	0	0	0	0	0	0	0	2	0	0	0	0	2	0	0	0	0	0	0	0	4

VI.) OTHER DECISIONS

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	Total
Art 6.3 decision revoked	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Art 8.6 decision revoked	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Art 14 decision imposing fines	0	0	0	0	0	0	0	0	1	4	1	0	1	0	1	0	0	0	0	1	9
Art 7.3 derogation from suspension (7.4 under Reg. 4064/89)	1	1	2	3	3	2	4	5	13	7	4	7	14	8	10	6	2	3	6	4	105
Art 21	0	0	0	0	0	1	0	1	0	1	1	0	1	0	0	0	2	1	0	0	8

On the conduct of Chilean competition authorities

- are their actions (i) neutral, (ii) protectionist, (iii) domestically oriented, or (iv) who knows
- note that FNE and TDLC can sometimes have different views (and the Supreme Court?)
- failed merger between D&S and Falabella (I was involved on this case)
 - The authority (TDLC in particular) was quite explicit in disregard any “national champion” argument (domestic consumer surplus)
- air cargo cartel (2000-2006)
 - British Airways, Air France-KLM and several other airlines (including LAN Chile) were investigated/fined by collusively imposing fuel surcharges in the price of freighting cargo
 - Unlike in other small Chile-like countries (e.g. New Zealand), Chile’s authorities didn’t seem to react to it despite its effect on domestic consumers and producers (here applies the “national champion” principle then?)