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The Birth, Effects, and Analysis of Competition Law on A Global Scale

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Abstract

Liberalization and globalization are two developments that characterize international economic law activities today. These two developments, with the increase in transportation and communication, have led to the national markets of countries influencing each other in some way since the beginning of the 19th century. Countries have transformed into a form that is economically dependent on each other. This dependency has increased exponentially, especially after World War II.

These developments on a global scale have pushed national governments to take measures with the help of taxation of goods in the traditional international trade area to protect their economies. Over time, subsidizing exports, restricting imports, and limiting capital movements at the international level have been added to these measures. These measures implemented by national governments to eliminate the negative effects of liberalization and globalization have led to increased costs during cross-border economic activities and major problems in commercial competition. These measures taken by national governments have given birth to competition law and policy at the national and international level.

Competition law and policy, after these developments, have gained a dominant position in today's international economic decision-making policy. In situations where there is no strong legal mechanism to eliminate or limit the harmful effect caused by globalization and liberalization, the ability of national states to control cross-border transactions and transactions within their borders with local policies has disappeared. This conflict has brought up the issue of erosion related to the sovereignty of nations and has gone as far as creating a tendency for conflict between countries. Ultimately, it inevitably triggers trade wars. With this study, the main issues concerning competition law that cause international concern will be revealed and will focus on the cooperation efforts of multinational institutions in the field of competition law and policy to solve these issues. It will be examined whether the measures taken by these institutions and regulatory mechanisms are sufficient to overcome the problems.

Keywords: Liberalization, globalization, competition law and policy, multinational institutions, anti-competitive practices, and international cooperation.

I-INTRODUCTION

Liberalization and globalization are two developments that characterize today's international economic law activities. These two phenomena, along with advances in transportation and communication, have led to the national markets of countries influencing each other since the early

19th century. This interaction has made countries economically dependent on each other, this dependency has increased exponentially, especially since World War II.

Liberalization, in other words, the process of reducing state regulations and restrictions on the economy, is a significant factor in the growth of globalization with the aim of establishing a free market. Globalization is defined as the process where businesses or other organizations start to develop international influence or start operating on an international scale. Globalization has been the medium for the spread of the effects of liberalization worldwide.

The rise of globalization has led to an increase in the interdependence of national economies. This dependency, thanks to the liberalization of trade and investment, has enabled the free flow of goods, services, and capital across borders. This economic integration has led to national markets mutually influencing each other more than ever before.

Liberalization and globalization have pushed national governments to take measures with the help of taxation of goods in the traditional international trade area to protect their economies. Over time, subsidizing exports, restricting imports, and limiting capital movements at the international level have been added to these measures. These measures have led to increased costs during cross-border economic activities and major problems in commercial competition. This situation has given birth to competition law and policy at the national and international level.

Competition law and policy, after these developments, have gained a dominant position in today's international economic decision-making policy. In situations where there is no strong legal mechanism to eliminate or limit the harmful effect caused by globalization and liberalization, the ability of national states to control cross-border transactions and transactions within their borders with local policies has disappeared. This conflict has brought up the issue of erosion related to the sovereignty of nations and has gone as far as creating a tendency for conflict between countries. Ultimately, this situation inevitably triggers trade wars.

Multinational corporations have taken various measures and established regulatory mechanisms to address the fundamental issues concerning competition law that cause international concern. This study will focus on the cooperation efforts of multinational institutions to solve these fundamental issues concerning competition law that cause international concern. It will be

analyzed whether the measures taken by these institutions and regulatory mechanisms are sufficient to overcome the problems.

II- FUNDAMENTAL ISSUES OF COMPETITION LAW THAT CAUSE INTERNATIONAL CONCERN

Competition law is a branch of law built on rules established for the purpose of protecting competition in goods and services markets. The main areas of competition law generally include the following topics:

• Prevention of Decisions and Practices that Hinder Competition: Prevention of agreements, decisions, and practices in goods and services markets that hinder, disrupt, or restrict competition.

• Prevention of Abuse of Dominance: Prevention of dominant enterprises from abusing their dominance.

• Regulation and Supervision: Making necessary regulations and supervisions to protect competition.

The complex practices that affect these main areas of competition law, affect competition in goods and services markets, and attract attention are:

• cartels and horizontal restrictions

• concentrations

• vertical restrictions

• anti-competitive practices

• External Issues

These areas demonstrate the complexity of competition law and its importance at the international level. Each of them includes various topics and challenges that are important for the healthy functioning of competition and the protection of consumers. Therefore, it is necessary to focus on each of these issues and develop effective solutions.

A) CARTELS AND HORIZONTAL RESTRICTIONS

A cartel is a monopolistic union formed by an agreement made by two or more businesses operating in the same field without losing their legal independence to reduce or eliminate competition (Mucuk, 1987: 53). The agreements made by multiple enterprises to control the market and restrict competition are also called cartel agreements. A cartel agreement includes issues such as the production, marketing, and pricing of a particular good (Özsunay, 1985: 12). Since cartel agreements restrict competition, have an impact on the market, or gain superiority in the market, in systems based on market economy, cartel agreements and decisions have been deemed invalid in principle.

Cartels generally refer to businesses in the same sector coming together to restrict competition through actions such as price determination, production restriction, or market sharing (Scherer, 1994: 89). Therefore, cartels are considered the primary trade-distorting power from the perspective of the monopoly that constantly emerges from international businesses. Also, they have been described as serious violations in the field of competition law that cause billions of dollars in damage to consumers every year[1].

Countries that involve themselves in competition and trade liberalization discussions tend to create favorable trade barriers to cartels that benefit domestic industries despite their harmful heavy impact at the national and international level. The main reason behind this is the price determination and restriction practice that takes place among exporting companies. It is believed that with this method, the industrial sector can successfully contribute to national policy goals. With this method, they create bias in trade policies by exporting different goods internationally in favor and shift economic needs from importing nations to exporting ones. The policies pursued by these countries lead to the birth of export and import cartels.

a-) Export Cartel

An export cartel is a union of export companies/units that impose restrictions on competition output to regulate the price. It is when enterprises operating in the same country act together to sell or market their products in foreign markets to gain an advantage against international competitors.

[1] Organization for Economic Co-operation and Development. FIGHTING HARD-CORE CARTELS. HARM, EFFECTIVE SANCTIONS AND LENIENCY PROGRAMMES. OECD. 2002

It can give a small Trade Promotion result, but when the export cartel is given the power to influence prices, it tends to disrupt foreign markets. Its primary effect is an increase in the price paid by consumers in other countries. For example, the Organization of Petroleum Exporting Countries (OPEC) is known as an export cartel. In 1973, they reduced oil production and raised their prices with the decision they made. This situation increased costs and led to the 1973 crisis.

For export cartels, export unions have been formed with the motivation to finance sales, trade with domestic products, and save costs through a common sales organization. Mostly small companies that could not start their own export campaigns preferred to be included in export cartels. In some countries, these unions have a legal basis. For example, Article 28 of the Constitution in Mexico is the primary source for export cartels.

In Mexico, the constitution[2] and federal law[3] provide exemption for the Cooperative Association selling abroad if the following conditions are successfully fulfilled: i) the product is classified as the primary source of income for the region or under priority requirement items; ii) the product is neither distributed nor sold within Mexican territories; iii) the nature of membership is voluntary and members are provided with the freedom to freely join the association; iv) they do not deal with the regulation or distribution of authorizations or permits given by the federal public administration; v) authorization is permitted by state legislation where the establishment of the business takes place.

In some countries, cartels regulated under explicit legal authority are exempted from the export cartel ban. For example, in Japan, the Rationalization cartel, the Depression cartel, and the Small-scale business cartel are exempt from export cartel bans. On the contrary, in some countries, cartel laws are explicitly banned. For example, the Sherman Act in the U.S. has banned most export cartels.

b-) Import Cartel

An import cartel is agreements made between different competing firms in one or more countries. Import cartels are usually established to control the import of a particular product or service and to create a monopoly on this product or service. Such a cartel tends to limit certain imported goods

[2] Included in paragraph eighth of Article 28 of the Federal Constitution
[3] Article 6 of the Federal Law of Economic Competition ("*Ley Federal de Competencia Económica*"– "FLEC")

and also determine its import and price and purchase time. There are many reasons why a country should allow an import cartel. The most important reason is that countries want to achieve a large market share in the domestic sector they target by allowing the import cartel. However, it is very difficult to understand why a group of buyers would do such a thing. Perhaps their desire to integrate vertically into the commodity production of the relevant industry can explain this.

c-) Combating Cartel Issues and International Cooperation

When looking closely at cartel investigation examples, it is seen that the largest competition blocks formed throughout history are mostly established by countries that are members of the European Union and the USA[4]. These countries have generally preferred to deal with the cartel problem alone rather than international cooperation. They have brought these problems to their domestic judicial venues.

Cartel investigations in the EU and the USA usually result in penalties being given to members who cross national borders (Evenett, Lehmann and Steil, 2000:98). In investigations that cross national borders, sometimes less success has been achieved due to the reluctance of the relevant country to cooperate due to its nature. For example, in the International Food Additives Cartel case, there was a lack of cooperation from the United States, which led to the presentation of evidence located abroad. In the end, successful evidence was obtained through a guilty confession and the price of lysine, an adhesive sold worldwide, was increased, which was effective in the lysine and citric acid markets. A heavy amount of a fine of 100 million dollars was applied to the relevant institutions.

On the other hand, in the graphite electrode case in the United States, the conspirators involved in price determination were found guilty on the grounds that they violated the Sherman Act because they manipulated the markets in the USA and some European countries[5]. The participating companies agreed to pay fines of 29 million dollars and 110 million dollars, respectively.

[4] The U.S. and E.U. entered into a competition cooperation agreement on September 23, 1991 (Agreement between the Government of the United States of American and the Commission of the European Communities Regarding the Application of Their Competition Laws) (reprinted in 30 I.L.M. 1491 (1991)).
[5] INTERNATİONAL COMPETİTİON POLİCY ADVİSORY COMMİTTEE MEETİNG - FEBRUARY 26, 1998, https://www.justice.gov/atr/international-competition-policy-advisory-committee-meeting-february-26-1998 (last visited Apr 2, 2021)

B) CONCENTRATIONS

With the phenomenon of globalization and the pressure of competition being felt on a global scale, enterprises are forced to come together to withstand the competitive conditions of foreign markets, and as a result, corporate partnerships such as company marriages are frequently experienced in many sectors. Mergers, acquisitions, joint ventures, and permanent control changes in the decision mechanism of enterprises are defined as concentration in doctrine. (Sanlı, 2000: 314)

Although concentrations have beneficial results such as the decrease in the prices of products, the development of new products, or the improvement of the quality of existing products, concentration transactions also carry risks such as the restriction, prevention, or distortion of competition in the market, the closure of the market to competitors when a dominant position is established in the market or the existing dominant position is strengthened (Kara and Tuzcu, 2023:1). The decrease in the number of enterprises in a competitive position in the market and the increase in their relative market shares can reduce the enterprises' motives to compete, this situation can increase the possibility of cooperation between competitors in the market. Concentrations with such anti-competitive risks are among the transactions prohibited in US antitrust law and EU competition law.

After the birth of competition law, concentration examination is characterized as an important practice in the implementation of competition policy. With a reverse approach to other restrictions and cartels, concentration policy primarily targets market structure and has the ability to maintain a sufficient number of sellers to create a competitive environment (Evenett, Lehmann and Steil, 2000:57).

In this context, authorities sometimes allow a concentration transaction, sometimes prohibit the transaction, and sometimes conditionally allow the transaction within the scope of the ban with a set of measures that will eliminate the possible anti-competitive effects of the transaction. These measures, classified as structural remedies and behavioral remedies in doctrine (OECD, 2007), are implemented within the scope of concentration controls in EU competition law and US antitrust law. This practice ensures a balance between the desires of enterprises to enter a new market or grow in the market through merger and the aim of competition authorities to protect competition (Özkan, 2019: 11).

C-) VERTICAL RESTRICTIONS

In most markets, manufacturers do not sell their goods directly, but reach the end customers through intermediaries, wholesalers, and retailers. Also, the final good is usually produced in several stages from raw material to intermediate good and final product. Most of the time, companies at different stages of the vertical process not only rely on spot market transactions, but also sign various types of contracts to reduce transaction costs, guarantee the stability of supply, and better coordinate actions. These agreements and contract provisions between vertically related firms are called vertical restrictions[6].

Vertical restrictions are agreements made between enterprises located at different stages of the production and distribution chain for the purchase, sale, or resale of goods. These agreements can have a restrictive effect on competition due to certain obligations that the parties impose on each other.

Vertical restrictions are usually agreements between a manufacturer and a retailer that determine certain conditions related to the sale and distribution of products. These types of agreements usually determine the price of a product, where it will be sold, to which customers it will be sold, and other marketing strategies. Therefore, vertical restrictions occur between so-called upstream suppliers and downstream customers, companies or firms at different production chain levels that deal with these suppliers[7]. Agreements considered vertical in nature vary between transactions between completely independent firms and interactions between two or more people within a single economic group. In regulations made by contract, the freedom of action of both downstream and upstream firms is restricted. These types of agreements can restrict competition because they are very prone to abuse and are therefore regulated by competition law in many countries.

In this respect, vertical regulations are considered a field under competition law and policy due to their changing, complex, controversial nature and are full of contradictions and disputes at the international level.

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[6] Vertical Restraints and Vertical Mergers. In Competition Policy. https://www.cambridge.org/core/books/abs/competition-policy/vertical-restraints-and-vertical-mergers (2023)
[7] COMPETITION AND TRADE EFFECTS OF VERTICAL RESTRAINTS, in TRADE AND COMPETITIONPOLICIES FOR TOMORROW. Organisation for Economic Co-operation and Development, 1999, at 43.

D-) ANTI-COMPETITIVE PRACTICES

A competition practice that exceeds a certain jurisdiction has caused competitive problems at the international level. The problems that arise in this case can be categorized under:

• anti-competitive event in multinational markets

• anti-competitive practices in a country affecting other countries' markets

• a country's anti-competitive practice affecting market access

• external issues

Anti-Competitive Practices-Multinational Markets: Due to the effect of trade liberalization and the geographical market for a particular good or service, anti-competitive practices will often result in crossing the country's internal borders. This will result in the effect being created not only within the region of the country's border but also within the relevant market. (Sykes, 2000:92-93). Accordingly, if we assume that all affected countries have competition regulations, multiple competition laws can be applied, which will eventually lead to inconsistencies. These inconsistencies tend to create consequential differences.

Anti-competitive practices in a country affecting other countries' markets: An anti-competitive practice in a country affects other countries' markets. Irregular trade regulations and competitions are the main reasons for the existence of anti-competitive practices. For example, due to the effect of export cartels, it also causes harm to foreign markets (Mitchell, 2000:308). The lack of cooperation creates an opportunity for illegal action for companies and therefore fails to regulate the components for competition culpability at the international level.

A country's anti-competitive practice affecting market access: Firms in a particular market can give themselves to practices that affect foreign competitors. In this way, trade barriers are created in the domestic market, and this barrier creates the possibility of 'non-interference' on foreign products. For example, if we consider vertical restriction, regulations propose special agreements, resale price maintenance, allocation of geographical regions, and franchise agreements, all of which can be applied to create the liquidation of the market from foreign competition.

External Issues: Competition law practices abroad generally also have some effects on the local economy. A country that has the right to apply its local competition law to firms operating in

foreign markets creates concern in its market. This approach usually brings several risks. The most serious risk is the international friction caused by the motive to protect the domestic market from foreign competition. Also, even if competition authorities detect anti-competitive behaviors occurring at the cross-border level, the likelihood of failing to take action against these behaviors is very high.

As stated above, there is no doubt that the fundamental issues of competition law that cause international concern, agreements in the direction of preventing competition, tendencies of concentration and monopolization through commercial partnerships, markets where natural monopolies arise due to increasing returns according to scale, disrupt competition and economic efficiency. By artificially reducing production in the market, increasing prices and firm profits will result in a transfer of welfare from consumers to producers and a net social welfare loss on the one hand. On the other hand, it will reduce employment and resource use in that sector. In the longer term, the lack of competition will lead to inertia, technological inefficiency, rent-seeking, wasteful, economically worthless lobbying, bribery, and other activities to protect the rent. Competition/regulation authorities and the competition/regulation laws they are responsible for implementing are generally created to solve the "market stumble" problems that come before us as 'lack of competition'.

The steps taken at the international level to prevent this market stumble that emerges as a lack of competition will be discussed below.

III-) STEPS TAKEN IN COMPETITION LAW AND POLICY AT THE INTERNATIONAL LEVEL

Competition law and policy are gaining more and more international character day by day in parallel with the process of globalization. In this context, international cooperation in the field of competition law and policy has a rising trend. International cooperation takes place on multilateral and bilateral platforms and primarily provides opportunities for countries to exchange information and experience, and also offers opportunities for the application of competition rules, albeit limited. The Competition Authority participates in the studies conducted by organizations such as the OECD (Organisation for Economic Co-operation and Development), UNCTAD (United Nations Conference on Trade and Development), World Trade Organization (WTO), and the European Union, which are multilateral platforms.

The steps taken for cooperation in the field of competition law and policy by these platforms can be categorized as previous initiatives and ongoing initiatives.

A-) PREVIOUS INITIATIVES

Although some initiatives were taken at the international level against practices restricting international trade before World War II, no significant progress was made. The most effective efforts through international agreements took place during the years of World War II, and only the European Communities and the OECD were able to succeed to some extent.

a-) Initiatives before World War II

Before World War II, anti-competitive practices at the international level usually emerged as international cartels or patent pools. The International Cartel issue led to some studies at that time. Although the League of Nations dwelled on the possibility of making international regulations against international cartels, the World Economic Conference, which gathered under the umbrella of the League in 1927, concluded that such an international regulation could not be implemented due to the differences in the national legislation of the member countries. However, the Conference suggested that the League of Nations, in cooperation with the governments of member countries, should ensure the supervision and control of some cartels and cartel-like agreements (Gunther, 1961:581-582).

Upon this proposal, the Economic Commission of the League of Nations gave two separate groups, one of lawyers and the other of industry experts, the task of researching the problems that could be created in this field. While the group consisting of lawyers concluded that the supervision of international cartels is both necessary and feasible and that this can be achieved by harmonizing the existing control systems in some member countries, the other group consisting of industry experts reported that international cartels have some economic advantages and there is no need for regulation. The Economic Commission did not decide which of these opposing views it adopted.

b-) Post-World War II Initiatives

1-) Havana Charter

The international cartel problem, due to significant changes in the regulation and implementation of trade and other factors playing a role in taking international control, began to lose its old

importance after World War II. The first major international conference on international trade after World War II was held in Geneva in 1947 and resulted in the signing of GATT (General Agreement on Trade and Tariffs). One of the biggest goals of this Conference was to establish an International Trade Organization (ITO) under the umbrella of the United Nations and to liberalize international trade. This goal came to the stage of realization with the "Havana Charter[8]" signed by the representatives of 52 countries in Cuba on March 24, 1948. Although the USA was the pioneer in convening the Havana Conference, it did not approve this "charter" that established the International Trade Organization. When the USA's negative attitude reflected on other countries, the ITO could not be established. However, the Havana Charter took its place as an important step in international efforts against restrictive practices. (Erol, 2000:179).

Although the Havana Charter officially failed, it made some visible contributions to the application and theoretical development of competition rules. On the other hand, it created a dual system related to the regulation of international competition law that determines interstate trade rules (Yacheistova, 1994:99).

2-) United Nations Economic and Social Committee (ECOSOC)

Principle Search The second of the important international efforts against restrictive practices is the principle decision of the United Nations Economic and Social Committee (ECOSOC) dated September 13, 1951. With this decision[9], the Committee invited states to "… take necessary measures to prevent restrictive practices and cooperate with each other". An Ad Hoc committee established with the same decision proposed a Treaty draft based on the provisions in the Vth Section of the Havana Charter. The draft faced great opposition and when the USA, who was annoyed by the discussions, withdrew its support, the studies remained inconclusive. Like the Havana Charter, the failure of the UN's efforts showed that countries were not yet ready to make an international regulation in the field of competition at that time. Moreover, there were wide differences between the national approaches of the countries to the problem. Especially the desire

[8] United Nations Conference on Trade and Employment. (1948). Havana Charter for an International Trade Organization. U.S. Department of State Commercial Policy Series, 113, U.S. Department of State Publication 3117.
[9] For the text of this resolution, see: U.N.Doc: E/2380 E/AC 37/3 (1953). The decision was partially published in RAHL; J.A.(Ed.): Common Market and American Antitrust (Overlap and Conflict) Mc Graw Hill 1070 p.425. The Committee of Ministers referred this Recommendation to the OECD (Organisation for Economic Co-operation and Development) (1), and also consulted the Preparatory Commission of the International Trade Organization (2) to prepare a Draft Agreement

to make such an international regulation in this field also increased the criticisms. However, at this period, the concept of "cooperation" at the international level slowly began to develop at least at the regional level (Erol, 2000:180).

3-) GATT (General Agreement on Trade and Tariffs)

Although the international acceptance of the Havana Charter was not approved, the section related to trade policy remained standing. This section, which was initially thought of as a temporary application, was transformed into GATT, which seemed very effective in determining the rules of international trade where the others disappeared. GATT, which was signed as a result of an international conference held in Geneva in 1947 under the framework of the UN to regulate international trade after World War II, continued as a bundle of treaties binding the states that are parties to it in rounds (rounds) repeated every ten years and took its current form with the signing of the Final Act establishing the World Trade Organization (WTO) in the last Uruguay Round. The aim of the GATT Agreements is to put an end to discriminatory practices that hinder trade between member countries and to ensure competition.

Since the beginning of GATT, it has been observed that it improved trade activities and practices that disrupt trade. The contribution of the Tokyo tour and the Uruguay tour[10] is very important. GATT General Director Mr. Peter Sutherland[11] shows the Uruguay tour as an important turning point in modern economic and political history. Although GATT does not directly affect competition policies, it has increased the results of its character as a result of giving an international agreement on commercial behavior rules.

B-) ONGOING INITIATIVES

The last of the international cooperation efforts in the field of competition law and policy is the efforts to make a multilateral agreement open to the participation of all countries. The European Union, the United Nations Conference on Trade and Development (UNCTAD), the Organisation for Economic Co-operation and Development (OECD), and the World Trade Organization (WTO)

[10] Uruguay Round of Multilateral Trade Negotiations. (1994). Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations. Marrakesh, Morocco, 33 ILM, 1140-1272.
[11] The Uruguay Round and the WTO: What Have We Achieved? World Competition Law and Economics Review, 18(1),1994.

can be cited as examples of these efforts. Among these, the EU represents cooperation among member countries of the union, while UNCTAD reflects the tendencies of developing countries. The OECD reveals the perspectives of developed countries. The WTO approaches the issue in the context of trade and competition relations.

a-) European Union (The EU)

The roof of the European Union legislation, which is binding and supranational for member states, was established with the 1951 Treaty establishing the European Coal and Steel Community, the 1957 Treaty establishing the European Atomic Energy Community, and the 1957 Treaty establishing the European Economic Community, also known as the Treaty of Rome. The first legal regulation in the field of competition law in Europe was made in the Treaty of Rome, which came into force in 1958. The main goal of the Treaty of Rome was to take basic measures to prevent competition within the community from disrupting the regular market. Therefore, with Article 86 of the Treaty, the abuse of a dominant position that tends to disrupt fair competition is prohibited.

In this respect, European Union competition law is the competition law used within the member countries of the European Union. This law supports the maintenance of competition within the European single market and the healthier functioning of market economy mechanisms by regulating the anti-competitive actions of enterprises to prevent the formation of cartels and monopolies that will harm the interests of society.

EU competition law today is largely based on Articles 101 to 109 of the Treaty on the Functioning of the European Union (TFEU) as well as a number of regulations and directives.

The main aim of the European Union Competition Policy and the acquis that constitutes this policy is to ensure the formation of an internal market where economic actors operating in member countries can compete under equal conditions. The European Union has brought rules to prevent the restriction of competition in violation of the law through competition policy in order to ensure the healthy functioning of all mechanisms of the market economy. These rules basically create a

system that prevents the disruption of competition in the internal market. EU Competition Policy brings rules under two main headings[12]:

1- Competition Rules for Enterprises (Anti-Trust)

With Article 101 of the Treaty on the Functioning of the European Union (TFEU), agreements between enterprises that can affect trade between member countries and can prevent, restrict or distort competition in the internal market are prohibited. Also in this context, it is also prohibited for one or more enterprises, which are in a dominant position in the entire internal market or a significant part of it in the context of a specific goods and services market, to abuse their existing dominant position in a way that will prevent competition in the market (TFEU Article 102). In addition, company mergers and acquisitions are also audited to prevent the formation of a dominant position that will disrupt competition or to strengthen an existing dominant position (Council Regulation No 139/2004).

2- Competition Rules for Member Countries

With TFEU, some rules have been introduced to prevent member countries from disrupting competition with their own decisions and actions. In this context: i) State Aids: Any support given by a member country or through state resources in any way that favors certain enterprises or the production of certain products, disrupts competition or creates a risk of disruption, and affects trade between member countries is prohibited. However, what state aids are not included in this prohibition has been determined in detail through both primary and secondary law (TFEU Article 107-109). ii) Public Enterprises and Enterprises Granted Special or Exclusive Rights: European Union competition rules are applied indiscriminately to private enterprises and public enterprises as a principle. The main reason for this is that the competitive structure in the markets can be disrupted not only by private sector enterprises but also by enterprises owned by member countries themselves or by enterprises to which they have granted certain privileges. Therefore, with Article 106 of the TFEU, it is regulated that member countries cannot take any measures that would constitute a violation of the competition rules in the TFEU regarding public enterprises and enterprises granted special or exclusive rights, and cannot continue existing measures.

[12] European Union Competition Law and Policy (Scope of Legislation Harmonization Chapter) https://www.ab.gov.tr/8-competition-policy_73.htlm, 2023.

As part of the modernization package that came into effect on May 1, 2004, the European Competition Network was established to prevent possible disruptions in the implementation of EU competition rules and to ensure that the application is consistent and effective. Thus, a cooperation network consisting of the competition authority of 27 EU member states and the members of the Commission Directorate-General for Competition has been established.

b-) OECD (Organisation for Economic Co-operation and Development)

The OECD, an international organization established in 1961, serves to increase people's economic and social welfare. The OECD serves as a platform for states to find solutions to common problems they face by transferring their experiences to each other. Competition law and policy is one of the issues that the OECD is interested in. The OECD's Competition Committee conducts studies in the field of competition law and policy, prepares various committee reports, organizes roundtable discussions on best practice, and prepares policy summaries. In addition, the Competition Committee also prepares texts such as recommendation decisions and best practices to be accepted by the OECD Council in the field of competition law and policy (Erol 2000:173).

The impact of the OECD on competition policies is seen in the evaluation of the economic policies of member countries, from time to time with a multidisciplinary approach and based on issues such as the competition policy and practice of the relevant state, whether markets are open to competition, and the rules and policies that form the regulatory framework in certain sectors.

The OECD has undertaken a task to encourage policies designed to achieve sustainable growth and employment. In line with this task, it contributes to raising the standard of living in member countries by preserving stability in financial terms. It contributes to world economic and trade development with its reports on competition issues (Bowett 1982:190).

Among the reports prepared by the OECD, the following are considered important in the field of competition law.

Among the various reports by the OECD the following are considered as important[13]: i-)The initiative of elaborating the international antitrust code consists of working group as well as a draft on international antitrust code with the help of trade agreement was submitted to OECD in a

[13] Organisation for Economic Co-operation and Development. FIGHTING HARD-CORECARTELS. HARM, EFFECTIVE SANCTIONS AND LENIENCY PROGRAMMES. OECD, 2002.

doubtful manner. ii-) The adoption of competition committee report of 2001 fighting with hard core cartels. iii-)Different recommendations and conferences by the joint group of OECDs on competition and trade.

c-) UNCTAD (United Nations Conference on Trade and Development)

UNCTAD is an international trade and development organization established under the umbrella of the United Nations. UNCTAD was established in 1964 with the aim of accelerating economic growth and development, especially in developing countries.

UNCTAD is one of the international organizations that attach great importance to competition policies. Especially, as a result of studies on restrictive commercial practices and discussions on multilateral behavior rules related to restrictive trade barriers, the United Nations General Assembly accepted the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in 1980 (Erol 2000:149).

The purpose of these principles, known as the UNCTAD set[14], was essentially focused on the Havana Charter and its ultimate goal was to liberalize person-specific non-tariff barriers to GATT. The UNCTAD set adopted a two-way approach, dealing with state action successfully between states at regional, national, and sub-regional levels with the help of existing rules and principles, and targeting special actions for businesses, including transnational companies, with the help of its rules and principles. According to these principles and rules, firms were obliged to avoid restrictive business practices.

Among the main activities of UNCTAD is to assist developing and transition countries in accepting and implementing competition rules. For this purpose, UNCTAD provides technical support to these countries and tries to help increase their capacities to accept and implement competition rules.

[14] Please refer to the United Nations publication E.79.II.D.14 or U. N. Doc. TD/RBPConf.10 for the text of this non-binding rules set, 'The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices'. The text has also been published on pages 255-267 of the work titled 'LOWE: Extraterritorial Jurisdiction Cambridge, 1983'.

d-) WTO (World Trade Organization)

After World War II, GATT, which was signed as a result of an international conference held in Geneva in 1947 under the framework of the UN to regulate international trade, continued as a bundle of treaties binding the states that are parties to it in rounds (rounds) repeated every ten years and took its current form with the signing of the Final Act[15] establishing the World Trade Organization (WTO) in the last Uruguay Round. Currently, a total of 144 countries, 34 of which are in observer status, and 7 international organizations, including the World Bank and the International Monetary Fund, are participating.

The main purpose of the agreement establishing the World Trade Organization is to put an end to discriminatory practices that hinder trade between member countries and to ensure competition. In this respect, with the establishment of the Organization, a Trade Policy Review Mechanism has been established within the organization. It is clear that for this mechanism to work well, member countries need to have a harmonious and consistent competition legislation with each other (Karakoç, 2003:26).

The WTO, established on January 1, 1995, is the legal and institutional body of multilateral trade systems. The WTO provides a legal framework for how governments will make their domestic trade and regulations and is a platform where trade relations between countries are developed through collective negotiations and negotiations.

The WTO, since its establishment, has initiated a new era of economic cooperation on the global stage. Hosting most of the developed and developing countries as members has enabled it to be effective on a global scale. Having a balanced structure that reflects the different interests and concerns of countries with different economic structures; making efforts towards practices that constitute competition violations in various multilateral trade agreements, in a sense, provisions that will be considered as a "task instruction" in the establishment purposes have been included; having an effective dispute resolution system and also, being a forum where member countries can bring up trade issues related to competition in the future and negotiate and consult on this issue, the WTO can be considered as the most suitable forum for examining trade-distorting practices

[15] "Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations." MTN/FA. (UR-93-0246)

and competition violations resulting from the implementation of competition policies (Karakoç 2003:28).

This quality has transformed the WTO into a prominent international organization in the process of globalization with the binding nature of its agreements. The WTO system, in case of non-compliance with the decisions of the Dispute Settlement Body, grants the right of sanction to the complaining party, defining how this sanction will be and how it will be applied. This legal infrastructure forms the basis of the WTO's power, while increasing expectations from the WTO. The power of the WTO directs any opposition group or interest group that has a complaint, even at the national level, to benefit from it (Pulat, 2003:2).

e-) Academic initiatives

In 1993, a group of experts and professors led by Professor Wolfgang Fikentscher elaborately made a proposal for a draft international antitrust code[16]. This, by means of an international agreement which must be conducted under the supervision of GATT or WTO with the help of a plurilateral trade agreement, and under that convention, the activities which target in clogging the market must be regularized. The Munich draft also proposes some minimum standards that are necessary for the competition law system. This particular draft consists of eight parts and twenty-one articles. There are three most important fields that were provided which were vertical and horizontal resistance, market power abuses, and mergers. The so-called Munich draft has also contemplated the establishment of two institutions which are the International Antitrust Authority and International Antitrust Panel. The Munich Draft was placed before the OECD in 1993 but unfortunately, it was not accepted with enthusiasm. The United States' take on this particular draft was that they believe this draft got influence from different European approaches and also it identifies some behavior that is being prohibited by means of a conceptual manner.

IV- CONCLUSION

With the trends of globalization, the distinction between the domestic market and the foreign market has become increasingly blurred, as a result, significant relationships between competition policy and trade policy have emerged today. The process of the world becoming a single market

[16] Draft International Antitrust Code as a GATT-MTO-Plurilateral Trade Agreement(International Antitrust Code Working Group Proposed Draft 1993), published andreleased on July 10, 1993, 64 Antitrust & Trade Reg. Rep. (BNA) No. 1628 (Aug. 19, 1993)(Special Supplement).

has had effects that both increase competition and threaten competition in the long term in terms of competition conditions. Practices such as cartels and global mergers, which used to be felt mainly in national markets, have come to affect all international trade as they enter the process of becoming a single market with globalization.

Competition law and policy are gaining more and more international character day by day in parallel with the process of globalization. In this context, international cooperation in the field of competition law and policy has a rising importance. International cooperation takes place on multilateral and bilateral platforms and primarily provides opportunities for countries to exchange information and experience, and also offers opportunities for the application of competition rules, albeit limited.

Many international organizations are working to establish a common understanding of competition at the international level. The EU, OECD, UNCTAD, and WTO are at the forefront of these organizations. As a result of the ongoing work of these organizations since World War II, the barriers to the free movement of goods, services, capital, and even people at the international level have begun to be removed one by one. In this integration process, many companies that previously operated at the national level have started to operate at the international level.

As clearly stated above, the globalization of trade and competition policy regulations are processes that need to go in parallel. Otherwise, as a result of the liberalization of trade, the occurrence of global cartels, concentrations, vertical restrictions, and competition-distorting activities will be inevitable. Therefore, it is necessary to develop, implement, and support ongoing efforts for a global discipline against cross-border anti-competitive enterprise practices.

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