

Foreword: important divergences

One can say that a relative consensus exists among competition law scholars about how horizontal restrictions to competition should be addressed under the rules of competition when such restrictions are generated by bi- or multilateral behaviour.

By contrast, the debate remains open, to a certain extent, for vertical restrictions, with some countries denying providers the possibility to limit the freedom of their distributors where others do not introduce such limitations.

But beyond these differences, there remains one important area where positions about whether intervention is warranted widely differ among countries – that area being the identification of practices deemed undesirable where adopted by firms having a significant market power.

That very topic was chosen as a theme for a conference held by Ascola in Tokyo, the purpose being to debate the boundaries placed in legal systems on behaviour adopted by powerful firms around the globe. During the conference, Ascola scholars exchanged their perspectives, mainly, on two issues. On the one hand, the identification of criteria, thresholds and elements to be used to determine the conditions under which market power, at some point, may appear to be excessive. And, on the other hand, the type of practices which, when used by firms with such a market power, could trigger an intervention on the part of antitrust regulators or judges.

Can conclusions be drawn from the rich debates that took place on these issues?

One is that agreement on the subject matter is still far from being reached. Some legal systems embody rules and authorities eager to control economic activities on their territories and even beyond their borders. The countries where these systems exist exhibit a strong tendency to regulate or at least control private economic power. At the end of the spectrum, other countries prefer to leave it to markets to decide what is best for society, even if this implies a reduction in the degree of competition as power is seized in some activities by one or several dominant players.

Is such a divergence in attitudes acceptable in a globalized environment? The rules of competition are nothing more than norms, that is, decisions taken by given authorities at a given moment in a given society about what is considered desirable. In that context, it would come as no surprise that these rules may differ where they address an issue as sensitive as the possession and use of power. For rules to be identical or only similar, we will need time – the time necessary to further approximate visions and experiences among continents.

The 10th Ascola annual conference was held in Tokyo in May 2015, after being postponed due to the 2011 earthquake. The Faculty of Law and the Institute of Comparative Law of Meiji University hosted the event with over 70 participants, including 50 Ascola members from overseas.

The three-day conference was held with the cooperation of the Japan Fair Trade Commission and received the financial support of the Egusa Foundation for International Co-operation in the Social Sciences (Tokyo), for which we are deeply grateful. We would also like to thank the staff, graduate and seminar students from Meiji University's Faculty of Law for their logistic support.

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