

Competition Policy and National Interests: Finding Optimal Regulation

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Abstract

This chapter explores the fundamental tension between competition policy, which aims to ensure market efficiency and neutrality, and the assertion of national interests, which often leads to state intervention. Tracing the evolution of competition law from its ancient roots in Roman and Islamic traditions to the distinct antitrust models of the United States and the European Union, the analysis establishes that this conflict is not new but has been continuously renegotiated throughout history. At the heart of this negotiation lies the Regulated Conduct Doctrine (RCD), a legal principle that exempts conduct compelled by state regulation from competition scrutiny, thereby providing a framework for balancing sovereign prerogatives with market discipline.

The chapter examines two critical contemporary arenas where this tension is most acute. First, it analyzes the regulation of state aid and subsidies, highlighting the clash between the pursuit of “strategic autonomy” in key sectors and the principle of competitive neutrality. Second, it addresses the challenges posed by transnational corporations (TNCs), particularly digital platforms, whose global scale and complex business models defy traditional enforcement. The study details how TNCs use regulatory arbitrage to circumvent oversight and how new instruments like the EU’s Digital Markets Act and Foreign Subsidies Regulation represent innovative responses. The chapter argues that competition policy is not a static legal field but a dynamic area of political economy, concluding that effective governance requires a multi-layered approach combining robust domestic institutions, international cooperation, and a pragmatic balance between industrial policy and competition norms.

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Introduction

The interaction between **competition policy** and **national interests** constitutes one of the most enduring dilemmas in modern economic governance. On the one hand, competition policy seeks to preserve market efficiency, fairness, and innovation by constraining the exercise of private and public economic power. On the other hand, states frequently invoke national interests—such as strategic autonomy, industrial policy, or security concerns—as grounds to limit or reshape the scope of competition. This duality generates a structural tension: whether markets should be governed primarily by principles of neutrality or by sovereign prerogatives aimed at advancing national objectives

The **Regulated Conduct Doctrine (RCD)** emerges as a pivotal framework for addressing this tension. Rooted in U.S. jurisprudence as the state action doctrine and reflected in the European Union’s regulatory exemptions, RCD embodies the principle that conduct compelled by legitimate regulatory frameworks may be exempted from competition law scrutiny. While this doctrine safeguards firms from being penalized for obeying regulatory mandates, it also raises concerns of regulatory capture, market foreclosure, and conflicts with supranational competition norms. Thus, the RCD illustrates both the **necessity and risks** of reconciling national regulatory choices with competition law enforcement.

The interaction of national interests and competition policy produces a series of **systemic challenges**. When governments rely on subsidies, protective regulations, or exemptions to advance strategic sectors, they risk undermining the competitive neutrality that sustains open markets. Conversely, an overly rigid application of competition law may constrain states from pursuing legitimate developmental or security goals. These conflicts are especially visible in areas such as state aid, foreign subsidies, and the regulation of transnational corporations. The study therefore engages with the fundamental question of how competition law can discipline market distortions without eroding the sovereign capacity to safeguard national priorities

Building on this tension, the **central hypothesis** of the study is that competition policy is not a static legal framework but a **dynamic negotiation between neutrality and sovereignty**. It argues that while competition law traditionally aimed to neutralize private restraints, its contemporary function increasingly extends to disciplining state interventions, subsidies, and industrial strategies. A secondary hypothesis holds that the growing role of digital platforms and transnational corporations has redefined the

boundaries of this negotiation, demanding new hybrid instruments that merge competition law with elements of industrial and trade regulation.

The study proceeds in several stages. The first section traces the **historical evolution of competition law**, from ancient and classical roots to the constitutional struggles of the early modern period and the distinct traditions of U.S. antitrust and EU competition policy. The second section examines the **role of state aid and subsidies**, analyzing their conceptual foundations, contemporary debates over strategic autonomy, and the mechanisms used to discipline their distortive effects. The third section focuses on **transnational corporations**, exploring both the challenges they pose for traditional enforcement and the new regulatory instruments designed to resist their circumvention strategies. Finally, the study advances a set of **policy recommendations**, emphasizing the importance of domestic institutional resilience, international cooperation, and the careful reconciliation of industrial policy with competition norms

In conclusion, the study underscores that competition policy cannot be understood merely as a technical legal regime; it is a field of **contested political economy**. Its effectiveness depends on balancing the imperatives of open markets with the legitimate pursuit of national and collective interests. The analysis suggests that only through adaptive, multi-level governance can states prevent competition law from either becoming a shield for protectionism or a straitjacket against legitimate state action.

1. The Historical Evolution of Competition Law and Policy

Competition law and policy occupy a distinctive place in modern governance, shaping not only market transactions but also the legal, economic, and political foundations of society. Far from a technical regime, it reflects enduring concerns with power, fairness, and the conditions of liberty in commercial life (Ezrachi & Stucke, 2016, pp. 12–18).

Its intellectual roots lie in diverse traditions: **Aristotle's** *commutative justice* framed exchange as a matter of reciprocity; **Roman law** condemned grain hoarding as a civic wrong; and the **Islamic hisba** entrusted market supervision to moral and religious duty (Müller, 2014; Rostovtzeff, 1957). These strands converged with **medieval and early-modern struggles** over monopoly and privilege, culminating in the **Statute of Monopolies (1624)**, which limited royal prerogative and placed competition under parliamentary authority (Letwin, 2013, pp. 53–60).

In the **United States**, antitrust law emerged as a response to industrial trusts, with the **Sherman Act (1890)** construing monopolization as a threat

to both consumer welfare and democratic self-rule (Thorelli, 1955, pp. 154–163). The **European Union**, by contrast, bound competition policy to the project of integration, embedding market freedom within a supranational constitutional order (Gerber, 1998b, pp. 350–365).

Intellectual currents from **Smith** to **Schumpeter** and **Hayek** supplied the analytical categories—efficiency, innovation, consumer welfare—that continue to shape enforcement and policy. Competition law thus emerges as a **longue durée institution**, continually renegotiating the boundary between state authority and market freedom, distributive fairness and allocative efficiency, static price control and dynamic innovation.

1.1. Ancient and Classical Roots

The origins of competition regulation can be traced back over three millennia, to the early practices of city-states where markets were inseparable from social order and political authority. In **Mesopotamia**, the *Code of Hammurabi* (c. 1750 BCE) imposed ceilings on prices and wages as a mechanism to stabilize fragile agrarian production and to shield dependent classes from exploitation. By linking exchange to distributive justice, the code redefined profiteering: no longer regarded as a natural corollary of scarcity, it was condemned as a transgression against collective stability and civic peace (Finley, 1985, pp. 17–22).

In **Classical Athens**, grain markets—vital for subsistence—were subject to direct criminal regulation. Cartelization among grain traders was prosecuted as a public wrong, reflecting the polis’s conviction that collusion endangered not only economic efficiency but also the survival of its citizens. By treating collective manipulation of staples as an affront to civic order, Athenian law embedded the principle that market fairness was a legal and moral obligation rather than a matter of private contract (Bresson & Rendall, 2016, pp. 245–252; Cohen, 1992, pp. 83–89).

The **Roman experience** extended and institutionalized these instincts. The *Lex Iulia de Annona* targeted hoarding and artificial restriction of grain supplies, while the regulated *collegia* (guild-like associations) were designed to prevent abuses within organized trades. The culmination came with **Diocletian’s Edict on Maximum Prices (301 CE)**, an ambitious empire-wide wage-and-price schedule intended to halt inflation and secure provisioning across the provinces. Although enforcement proved largely unworkable, the edict exemplified a recurring regulatory reflex: when the satisfaction of basic needs was at risk, imperial authority asserted itself by capping prices and disciplining markets (Rostovtzeff, 1957, pp. 312–318).

Viewed collectively, these episodes reveal a **civilizational pattern**: from Mesopotamian codes to Athenian prosecutions and Roman edicts, early societies repeatedly intervened to ensure that markets remained compatible with subsistence and social order. In each case, competition regulation was not a peripheral technicality but a foundational element of governance, embedding principles of fairness and stability into the earliest frameworks of economic life.

1.2. Asian and Islamic Contributions

The intellectual and institutional history of competition regulation is not confined to the West. Long before the emergence of modern antitrust, Asian and Islamic traditions elaborated regulatory mechanisms that combined political authority with moral philosophy.

In South Asia, Kautilya's *Arthaśāstra* (3rd c. BCE) stands out as both a treatise on statecraft and an administrative manual. Far from advocating laissez-faire, it treated markets as strategic domains of governance. The text prescribes inspections of weights and measures, penalties for fraudulent traders, and calibrated controls over vital commodities such as salt, metals, and forest produce (Olivelle, 2013, pp. 215–228). Monopoly rents, rather than being tolerated as rewards to private enterprise, were viewed as instruments that the state could harness, discipline, or redistribute in the interest of fiscal capacity and social welfare. Modern scholarship has thus interpreted the *Arthaśāstra* as evidence of an early awareness that unchecked private dominance could threaten both stability and legitimacy of rule.

A comparable tension is evident in **Han China**, most famously in the *Salt-and-Iron Debates* of 81 BCE. These debates brought Confucian scholars into direct confrontation with Legalist administrators over the state monopolies in salt and iron. The Confucians condemned monopolization as corrosive to the moral order and oppressive to the agrarian population, arguing that market exchange must remain subordinate to ethical norms and the sustenance of households. The Legalists, by contrast, defended monopolies as legitimate tools of imperial prerogative, essential for financing military campaigns, infrastructure, and the stabilization of prices in times of scarcity (Ebrey, 1981; Lewis, 2007, pp. 120–127). These deliberations prefigure modern controversies over industrial policy and market liberalization, highlighting how questions of competition were entangled with broader concerns of revenue, security, and distributive justice.

The **Islamic tradition** developed its own distinctive regulatory idioms through the institution of the *hisba*. Rooted in the Quranic imperative of

promoting right and forbidding wrong, the *hisba* functioned as a mechanism for market oversight, with the *muhtasib* (market inspector) charged with enforcing fair weights and measures, preventing fraudulent practices, and sanctioning exclusionary conduct. Thinkers such as **al-Ghazālī** emphasized that fairness in trade was a religious obligation tied to the moral accountability of merchants, while later jurists like **Ibn Taymiyyah** elaborated doctrines condemning monopoly and unjust enrichment as violations of communal welfare (Kalyoncuoğlu, 2021; Müller, 2014; Töre Sivrioğlu, 2013). By embedding commercial regulation in a moral and religious framework, Islamic law construed competition not merely as an economic process but as a matter of justice, communal solidarity, and ethical governance.

Taken together, these traditions reveal a striking convergence: from South Asian statecraft and Chinese policy debates to Islamic market supervision, diverse civilizations recognized that the unchecked pursuit of gain could destabilize society. Across cultural and temporal contexts, regulation of competition was framed as a necessary expression of political authority and moral responsibility, embedding ideals of fairness, subsistence, and order into the very foundations of economic governance.

1.3. Early-Modern Limits on Monopoly Privilege

The early-modern period marked a decisive turning point in the genealogy of competition regulation, as questions of monopoly and restraint of trade became entangled with constitutional struggles over the limits of royal prerogative. In **England**, the Tudor and Stuart monarchs relied extensively on exclusive patents and royal charters, often granted as fiscal expedients or political favors. These privileges aroused widespread resentment, as they inflated prices, restricted entry into trades, and generated rents at the expense of consumers and common producers (Coke, 2003).

The backlash crystallized in the celebrated **Case of Monopolies (Darcy v. Allen, 1602)**, in which the courts struck down a crown-granted sole right to manufacture playing cards as void against the common law. The decision denounced monopolies as contrary to liberty and trade, embedding a principle that economic privilege could be judicially limited in the interest of the commonwealth (Darcy v. Allen, 11 Co. Rep. 84b, 77 ER 1260). This judicial stance was codified in the **Statute of Monopolies (1624)**, which invalidated most forms of monopoly while preserving only narrow invention patents of limited duration. The Statute shifted regulatory authority over markets from prerogative to Parliament, entrenching a presumption in favor of competitive access and against exclusive privilege (Fisher, 2010).

These English developments occurred within a broader **European mercantilist context**, where states oscillated between granting protective monopolies to stimulate nascent industries and dismantling privileges to encourage free trade. The tension is visible in France, Spain, and the Low Countries, where monopoly was alternately deployed as an instrument of strategic capacity-building and condemned as a source of rent-seeking and stagnation (Viner, 1960, pp. 42–49). Such oscillations underscore a fundamental dilemma: whether concentrated economic power could serve as a tool of statecraft or whether it inevitably subverted the principles of open competition.

At the level of political economy, the critique of monopoly was systematized by **Adam Smith**, who argued that *“people of the same trade seldom meet together... but the conversation ends in a conspiracy against the public”* (Smith, 2022). For Smith, monopoly was both economically inefficient and politically dangerous, demanding vigilance through legal and institutional checks.

Thus, the early-modern period forged enduring legal categories—*restraint of trade, exclusive privileges, patents*—that would later be redeployed by modern competition law with greater economic sophistication. More importantly, it established a constitutional logic: that monopoly was not merely an economic aberration but a political problem implicating liberty, legitimacy, and the proper boundaries of sovereign power.

1.4. United States Antitrust Policy

The emergence of antitrust law in the United States during the late nineteenth century marked the transition from traditional prohibitions on monopoly to a systematic legal regime designed to discipline private concentrations of economic power. Unlike earlier interventions that primarily targeted state-granted privileges, U.S. antitrust confronted the rise of vast industrial trusts and corporate combinations that threatened both market competition and democratic governance.

The foundational statute, the **Sherman Antitrust Act of 1890**, reflected a combination of populist, republican, and economic concerns. It declared illegal “[e]very contract, combination...or conspiracy, in restraint of trade” and made monopolization a federal offense (Thorelli, 1955, p. 154). The Act was intended not merely as an economic measure but as a safeguard of political liberty, echoing fears that unchecked corporate power could corrupt markets and undermine republican institutions.

Early Supreme Court jurisprudence sought to interpret this broad statutory language. In **Standard Oil Co. v. United States (1911)**, the Court articulated the “rule of reason”, holding that only unreasonable restraints of trade violated the Sherman Act (*Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911), 1911). This principle gave courts flexibility but also introduced enduring debates about the scope of antitrust. Around the same time, **United States v. American Tobacco Co. (1911)** reinforced the idea that monopolization was unlawful when accompanied by exclusionary conduct and structural dominance (*United States v. American Tobacco Co.*, 221 U.S. 106 (1911), 1911).

Congress supplemented the Sherman Act with the **Clayton Act of 1914**, targeting specific anticompetitive practices—mergers, exclusive dealing, tying arrangements, and interlocking directorates—at an incipient stage. The same year, the **Federal Trade Commission Act** established the FTC and prohibited “unfair methods of competition”, thereby introducing a flexible administrative instrument to complement judicial enforcement (Kovacic & Shapiro, 2000).

From the New Deal through the mid-twentieth century, U.S. antitrust embraced a **structuralist orientation**, emphasizing the preservation of rivalry and dispersal of economic power. Courts adopted strong presumptions against horizontal mergers, vertical restraints, and resale price maintenance, seeing concentrated structures as inherently threatening to competition (Hofstadter, 1991).

Beginning in the 1970s, however, antitrust doctrine underwent a **Chicago School transformation**. Scholars such as Robert Bork and Richard Posner argued that the purpose of antitrust was the maximization of consumer welfare, measured primarily through price and output effects (Bork, 1978; Posner, 1976). Courts adopted this reasoning, narrowing the range of practices deemed anticompetitive and emphasizing administrability, efficiency, and the avoidance of “false positives”.

More recently, **Post-Chicago economics** has challenged these simplified models, reintroducing concerns about strategic behavior, foreclosure, and dynamic harms, particularly in the context of innovation and digital platforms (Hovenkamp, 2020, pp. 75–76). Contemporary debates center on how to adapt traditional antitrust tools to two-sided markets, network effects, and the data-driven economies of scale that characterize the digital age.

In sum, U.S. antitrust developed along a trajectory from populist distrust of concentrated power, to judicial balancing under the rule of

reason, to structural preservation of rivalry, and finally to economically calibrated standards focused on consumer welfare. Each stage reflects shifting conceptions of competition, efficiency, and fairness, demonstrating that American antitrust has always been as much a political project as an economic one.

1.5. European Union Competition Policy

Competition policy in the European Union evolved as both an economic instrument and a constitutional commitment. Unlike the United States, where antitrust emerged primarily as a response to private concentrations of power, the EU embedded competition law within the very framework of integration. From the outset, the objective was not only to preserve rivalry but also to secure the functioning of the common market, prevent economic fragmentation, and consolidate the political project of European unity.

The **Treaty of Rome (1957)** enshrined competition provisions in Articles 85 and 86 (now Articles 101 and 102 TFEU). Article 101 prohibits cartels and concerted practices that restrict competition, while Article 102 targets abuses of dominant position. These provisions were distinctive because they were drafted not as national statutes but as **supranational constitutional commitments**, directly applicable in Member States (Gerber, 1998a, pp. 350–365).

The **European Commission** became the central enforcement authority, endowed with investigatory, prosecutorial, and decisional powers. This administrative model contrasted with the U.S. reliance on private litigation and judicial development. By placing competition law in the hands of a supranational regulator, the EU emphasized consistency, integration, and fairness in market access (Korah, 2007).

The EU system has historically reflected the influence of **ordoliberalism**, a German intellectual tradition that views competition as a constitutional order necessary to restrain both private and public power. Ordoliberal thought insists that economic freedom is inseparable from political freedom, and that the state has a duty to secure the “competitive process” itself rather than merely maximize consumer welfare (Gerber, 1994). This orientation explains the EU’s persistent emphasis on exclusionary conduct and structural distortions, even where short-term price effects are ambiguous.

Over time, the EU system has evolved. The **Merger Regulation (1989, revised 2004)** introduced centralized merger control to prevent

structural concentrations inconsistent with the single market.³ The **State Aid rules**, codified in Article 107 TFEU, discipline distortive subsidies and reinforce competitive neutrality between firms across Member States (Fox & Gerard, 2017). The **Modernization Regulation (Regulation 1/2003)** decentralized enforcement by empowering national competition authorities and courts while maintaining coherence through the European Competition Network (Ehlermann, 2000, pp. 141–152).

More recently, debates have intensified over how to adapt EU competition law to **digital markets**, characterized by network effects, self-preferencing, and data-driven market power. The **Digital Markets Act (2022)** represents a quasi-regulatory supplement to traditional antitrust enforcement, imposing ex-ante obligations on large digital “gatekeepers” to ensure contestability and fairness (European Commission, 2022). Taken together, EU competition law reflects a hybrid identity: it is simultaneously a technical body of economic regulation, a constitutional safeguard for the single market, and an expression of a broader European political project. Its distinctive orientation—shaped by ordoliberal principles, administrative centralization, and supranational integration—underscores the divergence from the U.S. model and highlights the plurality of paths through which competition law has been embedded into modern governance.

1.6. Economic Thought and Contemporary Challenges

The trajectory of competition law cannot be disentangled from the history of economic thought. The very categories through which courts and policymakers have conceptualized “competition,” “monopoly,” and “restraint of trade” were forged in intellectual debates that stretch from classical political economy to modern industrial organization theory.

The **classical economists**—most notably **Adam Smith** and **David Ricardo**—conceived of markets as self-regulating systems in which the pursuit of individual interest could, under conditions of rivalry and openness, generate socially beneficial outcomes. Smith’s famous claim that “*people of the same trade seldom meet together... but the conversation ends in a conspiracy against the public*” remains one of the earliest systematic recognitions of collusion as an endemic threat to market order (Smith, 2022). Ricardo and his successors extended this logic, emphasizing the dangers of rent extraction through monopoly privileges and trade restrictions, while simultaneously advocating for free trade as the engine of comparative advantage (Ricardo, 2008). These arguments reinforced legislative movements in Britain and

3 Council Regulation (EC) No 139/2004.

the United States to abolish exclusive charters and to codify rules against monopolistic restraint.

The **neoclassical revolution** of the late nineteenth century transformed this framework by introducing formal models of supply, demand, and equilibrium, thereby enabling a more precise definition of “perfect competition” as a benchmark against which market conduct could be judged. The emergence of welfare economics provided antitrust with an analytical vocabulary—efficiency, consumer surplus, and deadweight loss—that continues to structure debates today (Marshall, 1890).

In the **mid-twentieth century**, antitrust enforcement in the United States was shaped by a **structuralist paradigm**: concentrated market structures were viewed as inherently conducive to collusion and exclusion, justifying strict prohibitions on mergers, tying arrangements, and vertical restraints. This approach resonated with the New Deal ethos of dispersing economic power to preserve democratic values (Hofstadter, 1991, pp. 60–65).

The subsequent **Chicago School** marked a decisive shift. Figures such as **Robert Bork** and **Richard Posner** argued that antitrust should abandon diffuse political or fairness-based goals and instead focus narrowly on **consumer welfare** as measured by price and output. In their view, many practices previously condemned—vertical restraints, exclusive dealing, even certain forms of predatory pricing—could often be efficient and pro-competitive. This approach, articulated in Bork’s (1978) *The Antitrust Paradox* and Posner (1976) *Antitrust Law* (1976), came to dominate U.S. jurisprudence from the late 1970s onward, leading to a significant contraction in enforcement activity.

Yet the **Post-Chicago school**, emerging in the 1980s and 1990s, contested the Chicago orthodoxy by emphasizing the potential for **strategic behavior and dynamic harms**. Through game theory and new industrial organization models, scholars demonstrated that predatory pricing, exclusive contracts, and vertical integration could, under realistic conditions, foreclose rivals, deter entry, and reduce long-term innovation (Salop & T. Scheffman, 1983).

These theoretical currents shape the **contemporary challenges** of competition law in both the United States and the European Union. The rise of **digital platforms**—search engines, social media, and online marketplaces—has exposed the limitations of price-centric metrics. Network effects, data-driven feedback loops, and platform ecosystems create forms of dominance that may harm innovation, privacy, and democratic discourse

even in the absence of traditional price increases (Farrell & Shapiro, 2010). These developments have catalyzed a renewed global debate over whether antitrust should integrate broader concerns of **fairness, pluralism, and political economy** alongside efficiency.

Thus, the evolution of economic thought—from classical political economy through Chicago and Post-Chicago economics—has continuously redefined the normative and analytical foundations of competition law. What began as a moral injunction against monopoly power has become an ongoing struggle to reconcile efficiency, fairness, and democratic legitimacy in the governance of markets. The contemporary digital economy, with its unprecedented concentration of data and intermediation, ensures that this intellectual dialogue remains unfinished, pressing regulators to revisit fundamental assumptions about what it means for markets to be “competitive.”

2. State Aid and Subsidies: a Competition Regulation Perspective

The regulation of state aid and subsidies illustrates one of the most complex frontiers in competition law. Unlike classical antitrust problems—cartels, mergers, abuse of dominance—where the state acts as an enforcer, here the state itself is the source of distortion. Subsidies, by definition, involve the transfer of public resources to favored undertakings, altering cost structures and competitive dynamics. This dual character—public purpose versus market distortion—explains why state aid occupies such a contested position in modern governance (Khan, 2017).

Historically, subsidies were regarded as **sovereign prerogatives**, part of the fiscal and industrial arsenal of rulers. Mercantilist states in early modern Europe dispensed privileges, export bounties, and tax exemptions in pursuit of national wealth and military power (Viner, 1937). The rise of globalized markets, however, transformed subsidies into **competitive weapons**, capable of tilting not only domestic but also international competition. As a result, subsidy control migrated from the realm of political economy into the architecture of competition law.

Today, the stakes are acute. Subsidies underpin strategic industrial policies—from semiconductors to green technologies—yet they also provoke fears of subsidy wars, protectionism, and fiscal waste. The challenge for regulators is to reconcile two imperatives: the **legitimacy of state intervention** in pursuit of collective goals, and the **integrity of competitive neutrality** as the foundation of market economies (Fox & Gerard, 2017).

2.1. Conceptual Foundations

From the perspective of competition regulation, **state aid and subsidies** are a conceptual anomaly. They do not fit neatly into the standard antitrust categories of cartels, mergers, or abuse of dominance, since their origin is not private market conduct but **public authority**. Yet their economic effects—distorted prices, altered cost structures, entry deterrence—mirror those of private restraints. This dual character has produced divergent scholarly and policy perspectives on how subsidies should be classified, disciplined, and justified.

The economic perspective emphasizes the welfare analysis. Classical and neoclassical economists tend to view subsidies as **allocative distortions** that create deadweight losses and sustain inefficiency. Subsidies may prop up “zombie firms” or shield incumbents from competitive pressure, producing long-term stagnation (Baumol & Blinder, 2015). By contrast, developmental and heterodox economists stress the **corrective potential of subsidies**: by addressing underinvestment in public goods such as research and development, education, or environmental protection, subsidies can enhance dynamic efficiency and long-term growth (Rodrik, 2004). Thus, even within economics, subsidies oscillate between being classified as “distortions” and as “remedies for market failure.”

The legal perspective approaches subsidies through the prism of **competitive neutrality**. In EU law, state aid is presumptively incompatible with the internal market under Article 107(1) TFEU, yet it may be exempted if it serves broader policy objectives and passes proportionality tests (Quigley, 2015). This framework reflects the conviction that competition law must constrain state discretion to prevent fragmentation of the single market. Conversely, in many non-EU jurisdictions, subsidies remain largely within the sphere of **industrial policy**, only indirectly scrutinized under trade law or procurement rules (Gerber, 1998b).

The political perspective highlights the sovereignty dimension. For some scholars, subsidies are legitimate expressions of democratic choice, allowing states to pursue social goals—employment, regional development, or strategic autonomy—even at the cost of efficiency. Others argue that **unchecked** subsidies erode the principle of **equality before the law**, replacing competition on the merits with government favoritism and clientelism. In this sense, subsidies test the boundary between the state as a neutral regulator and the state as an active market participant.

Finally, **international trade and competition perspectives** converge on the idea that subsidies must be disciplined because their **spillover effects** extend beyond national borders. The WTO's Agreement on Subsidies and Countervailing Measures (SCM Agreement) embodies this logic. According to WTO rules, subsidies may be permissible domestically, but if they harm foreign producers, they are treated as actionable or prohibited (Sykes, 2003). From this vantage point, subsidies are not just national economic tools but sources of international **competitive imbalance**.

Taken together, these perspectives illustrate why subsidies remain one of the most contested concepts in competition regulation. Economists debate their efficiency, lawyers debate their legality, and policymakers debate their legitimacy. The common denominator, however, is the recognition that subsidies implicate **fair competition** no less than private restraints of trade, making them central to the broader project of regulating market order.

2.2. Contemporary Debates: Strategic Autonomy vs. Competitive Neutrality

In contemporary competition regulation, the most acute controversies surrounding state aid and subsidies arise at the intersection of **digital transformation, climate policy, and geopolitical rivalry**. Industrial policies that channel vast public resources into semiconductors, renewable energy, artificial intelligence, or electric vehicles are defended as indispensable responses to systemic vulnerabilities brought by global supply chain fragility, climate imperatives, and strategic dependence on foreign actors (European Commission, 2022).

The concept of **strategic autonomy** has thus gained prominence, particularly in the European Union. It reflects the argument that certain sectors are too critical to be left to global market forces and must be protected or nurtured through targeted subsidies, even at the cost of strict neutrality. The United States' **CHIPS and Science Act (2022)** and the EU's **Green Deal Industrial Plan (2023)** illustrate this new paradigm, where subsidies are deployed not only as economic correctives but as tools of resilience and security.

From a competition law perspective, however, this shift provokes serious concerns. If every jurisdiction invokes strategic autonomy to justify subsidies, the cumulative effect may be a **subsidy race**—a spiral of protectionism that undermines the very principles of open and competitive markets. Critics warn that subsidies granted in the name of resilience can quickly degenerate

into disguised protection, shielding domestic firms from global rivalry and entrenching inefficiencies (Sykes, 2003).

The Chinese experience further complicates this debate. China's model of state-led industrial policy—especially in steel, solar panels, and high-tech sectors—has amplified geopolitical anxieties, prompting the EU and U.S. to recalibrate their competition frameworks to address the competitive distortions posed by foreign subsidies (Gao, 2021). In response, instruments such as the **EU Foreign Subsidies Regulation (2023)** aim to extend competition law to scrutinize the global competitive effects of third-country subsidies.

The contemporary debate, therefore, crystallizes a fundamental dilemma: should competition law prioritize **neutrality and efficiency**, or should it accommodate **strategic industrial policy** in the service of sovereignty, security, and sustainability? The outcome will define not only the trajectory of state aid control but also the future balance between **open markets and economic nationalism** in global governance.

2.3. Approaches to Addressing the Negative Effects of Subsidies

From the perspective of competition policy, regulators have developed a variety of strategies to mitigate the adverse effects of subsidies while still allowing states a degree of policy autonomy. These approaches reflect different institutional logics—judicial, administrative, and trade-based and reveal how legal orders attempt to reconcile state intervention with market fairness.

The *Ex-ante* control through authorization exemplifies the model chosen by the European Union (EU). If Member States decide application of aid measures, they must notify proposed aid measures to the European Commission, which assesses their compatibility with the internal market under Articles 107–109 TFEU. The Commission's ability to authorize, condition, or prohibit aid ensures that distortive measures are filtered before they take effect. This preemptive mechanism reduces fragmentation of the single market while preserving exceptions for legitimate policy goals such as regional development or green transition (Quigley, 2015).

As the second option *Ex-post* discipline is ensured through application of countervailing measures. In international trade law, the WTO's SCM Agreement allows Members to impose countervailing duties when another state's subsidies cause material injury to domestic industry. This approach accepts that subsidies may exist but seeks to neutralize their impact on competition through corrective tariffs. The Airbus/Boeing disputes illustrate

both the effectiveness and the limits of this mechanism, as prolonged litigation and retaliatory measures often delay meaningful correction (Gao, 2021).

A more nuanced approach focuses not on banning subsidies outright but on evaluating their **necessity and proportionality through application of proportionality and conditionality tests**. Aid is deemed permissible if it addresses a well-defined market failure, is limited to the minimum necessary, and avoids excessive distortions of competition. This analytical framework, now embedded in EU state aid guidelines and OECD recommendations, reflects a shift toward **effect-based analysis** rather than categorical prohibitions (Nicolaidis, 2015).

It should also be emphasized that a major global development in this field is the growing insistence on **transparency and accountability in the authorization of state aid schemes**. Rather than relying exclusively on prohibitions or Ex-post remedies, regulators increasingly demand that aid measures be disclosed to the public as a condition of legitimacy. Such transparency functions as an additional layer of discipline: by making state interventions visible, it empowers competitors, consumers, and civil society to scrutinize, contest, or monitor their effects. The **EU's transparency register** and the **WTO's subsidy notification system** illustrate this shift, signaling that effective subsidy control depends not only on formal legal mechanisms but also on informational checks and reputational pressures that constrain states through openness (Gerber, 1998b).

Finally, recent regulatory innovations demonstrate how competition law is being **extended beyond national borders** in response to the globalization of subsidies. The **EU's Foreign Subsidies Regulation (2023)** represents a landmark in this evolution, empowering the Commission to investigate and remedy distortions caused by state support originating outside the Union—an area previously beyond the reach of internal competition law and left largely unaddressed by the stalemated WTO framework. This development points toward the emergence of **hybrid regulatory instruments** that fuse elements of competition, trade, and industrial policy, reflecting a recognition that in an interconnected economy, the distortive effects of subsidies cannot be contained within national jurisdictions (Gao, 2021).

State aid and subsidies epitomize the **structural tension** between the prerogatives of sovereign intervention and the imperatives of competition regulation. They operate simultaneously as instruments of **industrial strategy**—capable of correcting market failures, fostering innovation, and enabling green or digital transitions—and as vectors of **market distortion**,

privileging select firms, entrenching incumbents, and fragmenting markets. This duality ensures that subsidy control cannot be reduced to either absolute prohibition or unchecked permissiveness, but must instead be understood as a **dynamic negotiation between legitimacy and distortion**.

Modern legal orders have institutionalized this negotiation through diverse mechanisms: the **EU's ex-ante notification and authorization system**, which pre-emptively disciplines national interventions; the **WTO's countervailing measures regime**, which seeks to neutralize cross-border spillovers; and **emerging hybrid instruments**, such as the EU's Foreign Subsidies Regulation (Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on Foreign Subsidies Distorting the Internal Market, 2022), which extend scrutiny to globalized subsidy practices. Each reflects a broader recognition that competition law must evolve to confront the reality of subsidies as **transnational distortive forces**, not merely domestic policy tools.

Yet the **central normative dilemma remains unresolved**. Should competition law position itself as the uncompromising guardian of neutrality, insulating markets from all forms of state favoritism? Or should it accommodate **strategic subsidies** in the name of sovereignty, resilience, and sustainability, particularly in an era of climate crisis and geopolitical rivalry? This dilemma transcends technical regulation: it raises fundamental questions about the **constitutional role of markets** in liberal democracies and the permissible scope of **economic nationalism** within a globalized order.

The trajectory of subsidy regulation will therefore shape not only the **contours of competition law**, but also the broader balance between state power and market freedom, between the demands of global integration and the pressures of domestic legitimacy. In this sense, the governance of state aid and subsidies stands as a litmus test for the future of economic regulation in the twenty-first century.

3. Transnational Corporations and Competition Policy

Transnational corporations (TNCs) are now central actors in shaping global trade, investment, supply chains, and innovation. Their cross-border presence grants them enormous market power, generating both opportunities for growth and risks of distortion. Competition policy must therefore ensure that markets remain fair, contestable, and conducive to innovation, while adapting to the increasingly complex practices of global firms. This tension is particularly acute in the digital economy, where e-commerce platforms

and social networks have become structural “gatekeepers” of information, transactions, and consumer access.

In the past decade, large platforms such as Amazon, Meta, Google, and Alibaba have consolidated positions that enable them to operate simultaneously as intermediaries, sellers, advertisers, and data controllers. This convergence of roles creates inherent conflicts of interest, especially through **self-preferencing** practices, whereby platforms prioritize their own products or services in search and recommendation rankings. Scholars have shown that such structural conflicts threaten market contestability and raise welfare concerns. The debate on whether structural separation of advertising and marketplace functions would benefit consumers remains unsettled, with some models suggesting ambiguous welfare effects (Rekabet Kurumu, 2023).

A further concern is the increasing use of **algorithmic pricing and machine learning**. Automated systems can lead to tacit collusion, higher prices, and consumer lock-in even without explicit agreements. The OECD has warned that traditional legal frameworks may be insufficient to capture such “invisible” harms in digital markets (Deng, 2020).

Another visible trend is the rise of **instant retail and ultra-fast delivery models**, especially in East Asia. Chinese platforms have heavily subsidized services to capture market share, raising questions about sustainability, deflationary pressure, and longer-term risks of dominance by scale rather than efficiency (OECD, 2024).

Finally, the dominance of TNC platforms has reignited debate over the **consumer welfare standard** as the guiding principle of competition law. While traditionally measured through price, output, and consumer choice, digital markets raise broader issues—such as data privacy, algorithmic transparency, and innovation incentives—that require a more comprehensive analytical framework (Makridis A. & Tayer, 2024).

These developments illustrate that regulatory innovations are spreading globally. The EU’s **Digital Markets Act** and **Digital Services Act** have inspired similar reforms in Asia and Latin America, while international organizations such as UNCTAD and the OECD have highlighted the risks of concentrated digital markets, especially for developing economies with weaker enforcement capacity (OECD, 2024).

Taken together, these trends show how TNCs, particularly in e-commerce and social networking, have stretched the boundaries of traditional competition law. Their global reach, technological capabilities,

and platform-based business models require regulators to rethink domestic frameworks and reinforce international cooperation. This article thus examines the evolving relationship between TNCs and competition policy, highlighting the urgency of adaptive, cross-border strategies to safeguard fairness, innovation, and consumer welfare in the digital age.

3.1. Challenges of Regulating TNCs

Despite the proliferation of competition laws worldwide, regulating TNCs remains a formidable task. The complexity arises from the cross-border nature of their operations, the strategic use of regulatory loopholes, and the technological innovations that enable new forms of market dominance. Three major sets of challenges stand out are jurisdictional and enforcement problems as well as corporate strategies to circumvent oversight.

From jurisdictional and enforcement issues perspective, competition authorities are traditionally bounded by national jurisdiction. Yet, TNCs frequently engage in conduct that spans multiple markets, exploiting gaps in enforcement and inconsistencies between legal regimes. Cross-border mergers, global cartels, and unilateral practices such as self-preferencing or tying often affect consumers in multiple countries simultaneously. Enforcement fragmentation creates opportunities for “regulatory arbitrage,” whereby firms exploit differences in legal thresholds, procedural rules, and institutional capacities to minimize scrutiny (Bradford, 2020). The absence of a binding global competition authority means that remedies in one jurisdiction may be easily offset by continued practices in another.

On the other hand, TNCs actively design strategies to avoid or soften regulatory intervention. **Forum shopping** allows firms to incorporate subsidiaries in jurisdictions with more lenient merger thresholds or state aid controls, thereby shielding major structural changes from oversight. Global **tax planning** techniques, including the use of intellectual property havens and transfer pricing, not only reduce fiscal obligations but also create resource asymmetries that strengthen market dominance (Zucman et al., 2015).

Lobbying further complicates enforcement. Digital giants have become some of the most powerful lobbying actors in Washington, Brussels, and national capitals, influencing not only the design of competition law but also the prioritization of enforcement agendas (Fraser et al., 2025). Such activities blur the line between regulatory compliance and regulatory capture, undermining public confidence in the neutrality of enforcement.

The challenges of regulation are most vividly illustrated by the experiences of major digital platforms. **Google** has faced a series of European Commission investigations into search bias, Android exclusivity agreements, and advertising intermediation practices, resulting in multi-billion-euro fines (Akman, 2020). However, critics note that fines alone have limited deterrent impact without structural remedies, since Google's revenues dwarf the penalties imposed.

Microsoft's dominance in personal computing provides an earlier precedent. Its tying of Internet Explorer to the Windows operating system in the late 1990s led to landmark antitrust litigation in both the United States and the European Union. The case revealed the difficulty of crafting remedies that preserve innovation incentives while dismantling exclusionary strategies (Gavil & First, 2009).

Amazon raises distinct concerns in its dual role as both marketplace operator and retailer. Investigations in the EU and the U.S. have focused on its use of non-public seller data to advantage its own products, a practice that epitomizes the conflict of interest inherent in platform capitalism (Lianos, 2021).

Finally, **Apple's** control over its App Store illustrates the tension between innovation and exclusion. By imposing high commission fees and restricting alternative payment systems, Apple has faced legal action in both the U.S. (*Epic Games v. Apple*) and the EU, raising questions about the appropriate boundaries of vertical integration in digital ecosystems (Smizer, 2021).

3.2. Global Governance and International Cooperation: Resisting TNC Circumvention

The European Union (EU) has been at the forefront of designing regulatory tools to counteract the tactics by which TNCs evade competition law. Traditional **Ex-post enforcement**, where regulators intervene only after anti-competitive harm occurs, was deemed too slow and ineffective against digital gatekeepers whose dominance relies on entrenched network effects and data advantages. In response, the EU adopted the **Digital Markets Act (DMA)** in 2022, which imposes **ex-ante obligations** on firms designated as "gatekeepers." These obligations explicitly prohibit self-preferencing, bundling of services, and the use of non-public business data to compete with dependent firms, thereby directly preempting common circumvention practices (Ibáñez Colomo, 2021).

Moreover, the EU has innovated with the **Foreign Subsidies Regulation (2023)**, which closes another major loophole: reliance on foreign state

subsidies to distort internal market competition. With the WTO's subsidy control system largely paralyzed, TNCs with ties to state industrial policy—particularly in sectors like semiconductors, energy, and digital technology—previously exploited regulatory gaps by benefitting from opaque subsidies outside the EU's jurisdiction. The new regulation allows the European Commission to investigate and block acquisitions or public procurement bids by firms unfairly supported by third-country governments (Blockx & Mattiolo, 2023). This demonstrates how the EU uses its internal market power to extend regulatory sovereignty beyond its borders.

In the United States, resistance to circumvention strategies has centered on the revitalization of **antitrust enforcement**. For much of the 2000s, a permissive legal environment allowed digital giants to consolidate dominance through serial acquisitions, data-driven lock-in strategies, and exclusionary platform practices. The Biden administration marked a turning point, appointing progressive scholars such as Lina Khan to the Federal Trade Commission (FTC) and Tim Wu to the White House competition team. Under this leadership, the Department of Justice (DOJ) and the FTC, through broadening the analytical scope of U.S. antitrust beyond narrow consumer price effects, have launched landmark lawsuits against Google, Meta, and Amazon, targeting exclusionary contracts, monopolistic tying, and predatory platform practices (Portuese, 2022).

Developing economies face distinct challenges in resisting TNC circumvention. Weak institutional capacity, smaller budgets, and political pressure from foreign investors often limit the effectiveness of domestic enforcement. TNCs have historically exploited these vulnerabilities by shifting profits through tax havens, structuring mergers below notification thresholds, and engaging in aggressive lobbying in investment-dependent states. To resist these strategies, emerging economies have increasingly relied on **collective platforms** such as the **International Competition Network (ICN)**, the **OECD's Competition Committee**, and **UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy**. These forums facilitate information sharing, capacity building, and soft convergence of standards, reducing the opportunities for TNCs to play jurisdictions against one another.

Some developing states have begun experimenting with **regional cooperation frameworks**. For example, the **Eurasian Economic Union (EAEU)** has adopted a supranational competition authority with powers to review cross-border mergers, while the **COMESA Competition Commission** in Africa plays a similar role for its member states. These

institutions, though still evolving, represent proactive resistance to TNCs' efforts to exploit fragmented national jurisdictions (Gal, 2009).

The cumulative effect of these measures is a slow but steady shift toward **hybrid governance**, where states blend domestic enforcement with international cooperation and regulatory extraterritoriality. TNCs may continue to test the boundaries of law through circumvention, but states are responding by reinforcing tools that operate across borders: subsidy control, merger review, mandatory data disclosure, and interoperability obligations. These strategies suggest that competition law is no longer confined to national economic policy, but is becoming part of the architecture of global economic governance.

4. Regulated Conduct Doctrine and Competition Policy

Regulations such as state aid and subsidy regulations, foreign trade regulations, tax regulations, and financial oversight mechanisms constitute the primary economic tools used by governments to advance social welfare, the public good, and political objectives within the framework of the “public interest” theory. From an economic perspective, “public interest” theory envisages regulations to be implemented to ensure the public interest in response to “market failures”. In this case, it is anticipated that efficient allocation of resources cannot be achieved through the market mechanism, and it is thought that optimal distribution of the resources will be achieved through state intervention (Aktan & Yay, 2016a). However, these instruments frequently distort economic efficiency and undermine the competitive market mechanism, which are central pillars of economic theory. In such circumstances, competition authorities are compelled to navigate the tension between safeguarding the public interest and preserving economic efficiency—an issue that brings the Regulated Conduct Doctrine (RCD) into focus (Karakaya, 2022).

The Regulated Conduct Doctrine (RCD) serves as a guiding principle in resolving conflicts between the application of competition law and sectoral regulations. This doctrine helps determine which regulatory framework should take precedence when the obligations imposed by public authorities or regulatory bodies in certain sectors contradict the general prohibitive norms of competition law (OECD, 2011). The core rationale of the doctrine lies in the state's role in correcting market failures and promoting public interest through regulatory intervention. Accordingly, the RCD should not merely be regarded as a mechanism that legitimizes anti-competitive behavior, but

as a balance-oriented tool designed to preserve both economic efficiency and technological innovation within the framework of public welfare.

Striking this balance necessitates a cost–benefit assessment of regulatory interventions. The doctrine of regulated conduct is fundamentally based on the method of comparing the public interest with the requirements of competition law. Indeed, the benefits of sector-specific regulations are compared with the returns derived from the planned competitive mechanism in the market (Aktan & Yay, 2016b). This hypothetical comparison leads to a choice between maintaining market-specific regulations and establishing a competitive mechanism. In this case, when the benefits of sector-specific regulations outweigh their costs, the decision is made to maintain the relevant regulations, while when the costs are high, the decision is made to remove them (Trebilcock, 2005).

In the *Electricité de France (EDF)* decision, the European Commission determined that EDF, by virtue of its status as a public enterprise, was not subject to bankruptcy laws and had an unlimited state guarantee, which constituted incompatible state aid. The European Commission’s decision required the removal of the guarantee. Consequently, EDF was incorporated to be subject to market disciplines, thus eliminating the guarantee (Karakaya, 2022, p. 18).

One of the most pertinent decisions to the RCD is the Turkish Competition Authority’s (TCA) decision regarding TÜPRAŞ⁴. Indeed, in the case evaluated by the TCA, some private enterprises alleged that TÜPRAŞ failed to implement cost-effective pricing, engaged in excessive pricing, and thus abused its dominant position. During the file’s evaluation phase, the TCA determined that decisions by a sector-specific regulator on this matter would yield more effective results. The certainty provided by an “ex-ante” intervention by the sector regulator was preferred to an Ex-post intervention by the TCA (Sarıççek, 2012, p. 71).

The European Commission’s decision on the EDF determined that the economic efficiency derived from establishing a competitive mechanism was greater than that derived from sector-specific regulation. Therefore, the establishment of competitive rules was preferred. Nevertheless, in the context of TCA’s decision, it was preferred that sector-specific regulations would produce more effective results compared to competition regulations.

Closely related to the RCD is the notion of exemptions in competition law. Exemptions allow certain restrictive practices or agreements that would

4 Decision of the TCA is dated 04.11.2009 and numbered 09-52/1246-315.

otherwise be deemed anti-competitive to be lawfully justified when they generate economic efficiency or social benefits. For instance, within the European Union, this concept has been institutionalized through Block Exemption Regulations. These regulations recognize that specific types of agreements—such as technology transfer, vertical distribution, or research and development (R&D) cooperation—may restrict competition to some extent but still contribute positively to overall economic efficiency and innovation (Esin, 2022). Therefore, the intersection between the RCD and the exemption principle plays a vital role in redefining the boundaries between state intervention and market competition, ensuring that public policy objectives are harmonized with competitive market dynamics.

Block exemption regulations can be viewed as legal instruments that promote technological efficiency and accelerate innovation processes. The European Commission's *Technology Transfer Block Exemption Regulation (TTBER)*, for instance, protects firms engaging in R&D collaborations or technology licensing agreements from the deterrent effects of antitrust enforcement (European Commission, 2025). This approach aligns with the public interest objective embedded in the RCD, framing technological progress as an integral component of social welfare. In the case of TTBER, the sharing of technological knowledge and the facilitation of innovation are not interpreted as anti-competitive conduct but as mechanisms that enhance market dynamism and long-term economic growth. Hence, block exemptions serve to legitimize technological advancement as a form of regulated conduct consistent with the pragmatic nature of the RCD (Brook, 2022).

Although the “exemption regime” is not applied in US competition law, the “rule of reason” analysis method is used instead through judicial precedent. With this analysis method, rather than creating a common exemption regime for all sectors as in EU competition law, the competition authority and courts conduct a case-by-case analysis for each case. The “rule of reason” analysis examines the competitive and anti-competitive effects of each action taken by the undertaking, and the net competitive effect is investigated by balancing these effects (through a cost-benefit analysis). During the analysis, it is examined whether there is an alternative action that is less restrictive of competition. Therefore, a benefit-cost analysis is performed for each case, and a decision is made accordingly. This demonstrates another exemption mechanism based on the RCD doctrine. Countries outside the EU generally apply an exemption regime (Turgut, 2021, p. 261).

In conclusion, the relationship between the RCD and block exemption regulations reflects the adaptability and contextual awareness of modern competition policy. Both frameworks recognize that market mechanisms do not always generate optimal outcomes. In sectors where technological development and innovation must be actively promoted, granting regulatory precedence over strict competition enforcement serves the broader public interest (Brook, 2022). The block exemption regime can therefore be interpreted as an institutionalized extension of the RCD. Together, these instruments establish a sustainable link between economic efficiency, technological progress, and competitive balance, demonstrating that modern competition law functions not only as a mechanism of market discipline but also as a strategic instrument of innovation and development policy. As observed in the analyses conducted, it is known that the RCD is the fundamental mechanism for balancing national interests and competition law, and that various regulatory mechanisms have been established within the framework of this doctrine.

5. Policy Recommendations

The analysis above highlights the profound challenges that transnational corporations pose for competition authorities worldwide. Addressing these challenges requires a multi-layered strategy that combines domestic institutional strengthening, international cooperation, and a careful balancing of national development objectives with global competition norms.

First, countries must strengthen their **domestic competition frameworks**. This entails not only modernizing legal provisions to cover digital platforms and algorithmic practices but also ensuring that competition authorities have adequate independence, resources, and technical expertise. Experience from the European Union and the United States demonstrates that robust institutions are prerequisites for resisting TNCs' circumvention strategies. For smaller or developing economies, capacity-building programs and the adoption of clear procedural rules—such as mandatory pre-merger notifications and data transparency obligations—can help close common regulatory loopholes. Competition policy is considered superior and takes precedence over sector-specific regulations in intervening in anti-competitive practices implemented by TNCs, prohibiting mergers and acquisitions that could distort competition, and facilitating the transition process for opening up regulated sectors to competition.

Second, there is a pressing need to enhance **international cooperation and information sharing**. TNCs operate across borders, exploiting

fragmented enforcement and regulatory arbitrage. Initiatives such as the International Competition Network (ICN), OECD roundtables, and regional institutions like the COMESA Competition Commission or the Eurasian Economic Union's competition body illustrate how coordinated review of mergers and cross-border conduct can prevent regulatory gaps. Strengthening these networks and embedding cooperation into bilateral trade and investment treaties would reduce the asymmetry between global firms and national regulators.

Third, policymakers must carefully **balance industrial policy with competition discipline**. While governments increasingly deploy subsidies and state aid to support strategic sectors—ranging from semiconductors to green technology—such measures must be designed with transparency and accountability to avoid distorting competition. Instruments such as the EU's Foreign Subsidies Regulation represent one way of reconciling industrial objectives with market fairness. For developing countries, the challenge is to ensure that industrial policy tools foster genuine capacity-building and innovation without entrenching monopolistic or protectionist structures. Supporting national champions, building the country's competitive strength, and ensuring the rapid and decisive development of infant industries and certain sectors can yield more effective results through subsidies and state aid. In this context, sector-specific regulations are considered more appropriate than competition regulations in terms of economic efficiency.

However, the disappointing performance of public monopolies, growing awareness of potential regulatory shortcomings, the weakness of arguments defending monopolies, and the effectiveness of technological developments in reducing costs and successfully transferring benefits to consumers create strong arguments in favor of competition law.

Within the framework of regulating multinational corporations and increasing the effectiveness of state aid and subsidies, markets expected to be competitive in the short term should be distinguished from markets requiring regulation in the long term. In the former case, implementing competition policy in regulating the relevant sector will yield positive market outcomes. In the latter case, implementing sector-specific regulations will play a significant role in increasing economic efficiency.

6. Conclusion

The historical trajectory of competition law reveals a continuous negotiation between ethical ideals, political authority, and economic analysis. Ancient Mesopotamian and Roman rules reflected a sovereign duty

to stabilize essential markets, while Greek and scholastic thought grounded exchange in justice and fairness. Asian and Islamic contributions emphasized the integration of moral duty with institutional oversight, shaping norms that still resonate in modern consumer protection and anti-cartel enforcement.

Early-modern struggles over royal monopolies reframed competition as a constitutional issue—shifting from privilege to parliament and law. The American antitrust tradition institutionalized this spirit, evolving from structural preservation of rivalry toward an economics-based analysis. By contrast, the European Union embedded competition policy within integration, ordoliberal fairness, and administrative control, offering a distinctive model that balances economics with broader social concerns.

Economists of the 18th to 20th centuries profoundly influenced enforcement. Smith highlighted both the virtues of rivalry and the dangers of collusion; Mill stressed welfare limits; Schumpeter and Hayek reframed competition as innovation and discovery; Solow quantified growth drivers. These insights, later refined by Chicago and post-Chicago scholarship, forged the analytical tools still used in courts and agencies today.

The enduring lesson is that competition law is never static. It adapts to technological change, economic theory, and political values. In the digital era of platforms, data, and algorithms, the discipline must again recalibrate—preserving rivalry, encouraging innovation, and preventing exclusion while recognizing its dual heritage: a moral commitment to fairness and a pragmatic reliance on economic science.

The growing influence of transnational corporations, particularly in the digital economy, has tested the resilience of traditional competition law frameworks. Platforms that simultaneously function as marketplaces, advertisers, and sellers embody new forms of market power that cannot be adequately addressed by narrow consumer welfare metrics or purely national enforcement strategies. The EU's proactive regulation, the revitalization of U.S. antitrust, and the cooperative efforts of developing economies illustrate an emerging pattern: countries are resisting corporate circumvention not in isolation, but through coordinated, hybrid governance.

This article has shown that the challenges are multidimensional—jurisdictional fragmentation, sophisticated corporate avoidance strategies, and the technological complexity of algorithmic and data-driven markets. Yet it has also demonstrated that states are not powerless. By strengthening domestic institutions, expanding international cooperation, and carefully

integrating industrial policy with competition norms, governments can reassert control over markets dominated by TNCs.

Ultimately, the regulation of TNCs is not merely a technical legal issue but a cornerstone of global economic governance. Ensuring that markets remain fair, contestable, and innovative requires **adaptive, cross-border competition policies** that reflect the realities of an interconnected global economy. Without such adaptation, the risks of concentration, inequality, and diminished consumer welfare will only deepen. With it, competition policy can continue to serve as a guardian of both economic efficiency and democratic accountability in the era of transnational corporate power.

Although competition policy is dynamic, striking a balance between national interests and competition policy remains a difficult choice for policymakers. In this context, it should be noted that all discussions are shaped within the framework of the “Regulated Conduct Doctrine.” Indeed, it is impossible to reach a definitive conclusion as to whether sector-specific regulations or competition policy will be more effective economically. Which regulation will provide greater efficiency depends on time, place, and the economic methods applied. In this context, the use of more measurable economic indicators in the implementation of economic regulations (including competition regulations) will shed more light on this debate.

References

- Akman, P. (2020). A Web of Paradoxes: Empirical Evidence on Online Platform Users And Implications for Competition And Regulation in Digital Markets. *Common Market Law Review*, 5(57). <https://ssrn.com/abstract=3835280>
- Aktan, C. C., & Yay, S. (2016a). Regülasyon İktisadına Giriş . *Ekonomi Bilimleri Dergisi* , 8(1).
- Aktan, C. C., & Yay, S. (2016b). Regülasyonların Politik İktisadı: Regülasyonların Etkileri, Fayda ve Maliyetleri. *Ekonomi Bilimleri Dergisi* , 8(2).
- Baumol, W., & Blinder, A. (2015). *Economics: Principles and Policy* (13th ed.). Cengage.
- Blockx, J., & Mattiolo, P. (2023). The Foreign Subsidies Regulation: Calling Foul While Upping the Ante? *European Foreign Affairs Review*, 28(Special Issue), 53–74. <https://doi.org/10.54648/EERR2023014>
- Bork, R. H. (1978). *The Antitrust Paradox*. Basic Books.
- Bradford, A. (2020). *The Brussels Effect*. Oxford University Press New York. <https://doi.org/10.1093/oso/9780190088583.001.0001>
- Bresson, A., & Rendall, S. (2016). *Institutions, Markets, and Growth in the City-States*. Princeton University Press. <https://doi.org/10.2307/j.ctt21c4v6h>
- Brook, O. (2022). Block Exemption Regulations and Public Policy: in The Defence of BERS. *Cambridge Yearbook of European Legal Studies*, 24, 111–142. <https://doi.org/10.1017/cel.2022.1>
- Cohen, E. E. (1992). *A Banking Perspective*. Princeton University Press. <http://www.jstor.org/stable/j.ctt7tcft>
- Coke, S. E. (2003). *Selected Writings and Speeches of Sir Edward Coke* (S. Shepherd, Ed.; Vol. 1). Liberty Fund.
- Deng, A. (2020). *Algorithmic Collusion and Algorithmic Compliance: Risks and Opportunities*. <https://one.oecd.org/document/DAF/COMP>
- Ebrey, P. (1981). *Chinese Civilization: A Sourcebook* (Second Edition). The Free Press.
- Ehlermann, C.-D. (2000). The Modernization of EC Antitrust Policy: a Legal and Cultural Revolution. *Common Market Law Review*, 37(Issue 3), 537–590. <https://doi.org/10.54648/267648>
- Esin, A. (2022). *Avrupa Birliği Rekabet Grup Muafiyeti Rejiminde Son Gelişmeler*. Rekabet Kurumu. <https://www.rekabet.gov.tr/Dosya/persembe-konferanslari-yayinlari/perskonfyn80.pdf>
- European Commission. (2025). *Block Exemption Regulations*. European Commission Publication.
- European Commission. (2022). *The Digital Markets Act: Ensuring Fair and Open Digital Markets* . European Commission Publication.

- Ezrachi, A., & Stucke, M. E. (2016). *The Promise and Perils of the Algorithm-Driven Economy*. Harvard University Press. <http://www.jstor.org/stable/j.ctv24w63h3>
- Farrell, J., & Shapiro, C. (2010). Antitrust Evaluation of Horizontal Mergers: An Economic Alternative to Market Definition. *The B.E. Journal of Theoretical Economics*, 10(1). <https://doi.org/10.2202/1935-1704.1563>
- Finley, M. I. (1985). *The Ancient Economy* (2nd ed.). University of California Press.
- Fisher, M. (2010). *The Case that Launched a Thousand Writs, or All that is Dross? Re-conceiving Darcy v Allen: The Case of Monopolies*. UCL Publications.
- Fox, E. M., & Gerard, D. (2017). *EU Competition Law: Cases, Text and Context*. Oxford University Press.
- Fraser, A., Beckel, M., Keesing, L., & Minkin, A. (Mia). (2025, May 22). *The Tech Money Machine: How Silicon Valley Buys Power — and Shapes Reality* | TechPolicy.Press. Tech Policy Press. <https://www.techpolicy.press/the-tech-money-machine-how-silicon-valley-buys-power-and-shapes-reality/>
- Gal, M. S. (2009). Regional Competition Law Agreements: An Important Step for Antitrust Enforcement. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.1505543>
- Gao, H. (2021). WTO REFORM AND CHINA: DEFINING OR DEFINING THE MULTILATERAL TRADING SYSTEM? *HARVARD INTERNATIONAL LAW JOURNAL*, 62.
- Gavil, A., & First, H. (2009). Microsoft and Its Global Discontents: Antitrust, Regulation, and Beyond. *Antitrust Law Journal* , 76(3).
- Gerber, D. J. (1994). Constitutionalizing the Economy: German Neo-Liberalism, Competition Law and the “New” Europe. *The American Journal of Comparative Law*, 42(1), 25. <https://doi.org/10.2307/840727>
- Gerber, D. J. (1998a). *Law and competition in twentieth century Europe : protecting Prometheus*. Clarendon Press.
- Gerber, D. J. (1998b). *Law and Competition in Twentieth-Century Europe* . Oxford University Press.
- Hofstadter, R. (1991). What Happened to the Antitrust Movement? In *The Political Economy Of The Sherman Act* (pp. 20–31). Oxford University Press-New York, NY. <https://doi.org/10.1093/oso/9780195066425.003.0001>
- Hovenkamp, H. (2020). *Federal Antitrust Policy: The Law of Competition and Its Practice* (6th ed.). West Academic Publishing.
- Ibáñez Colomo, P. (2021). The Draft Digital Markets Act: A Legal and Institutional Analysis. *Journal of European Competition Law & Practice*, 12(7), 561–575. <https://doi.org/10.1093/jecclap/lpab065>

- Kalyoncuoğlu, K. S. (2021). Gazâlî'nin İslam İktisat Düşüncesi Çerçevesinde Ticaret Ve Servet Anlayışı. *Ekonomik ve Sosyal Araştırmalar Dergisi*, 17(1).
- Karakaya, M. M. (2022). *Rekabetçi tarafsızlık* (211; Uzmanlık Tezleri Serisi).
- Khan, L. M. (2017). *Amazon's Antitrust Paradox*. 126 YALE L. J. 710 .
- Korah, V. (2007). *An Introductory Guide to EC Competition Law and Practice* (9th ed.). Hart.
- Kovacic, W. E., & Shapiro, C. (2000). Antitrust Policy: A Century of Economic and Legal Thinking. *Journal of Economic Perspectives*, 14(1), 43–60.
- Letwin, W. (2013). *The Origins of Scientific Economics*. Routledge. <https://doi.org/10.4324/9781315016511>
- Lewis, M. E. (2007). *The Early Chinese Empires: Qin and Han* . Harvard University Press.
- Lianos, I. (2021). Amazon and the Dual Role Problem. *World Competition* , 44(3).
- Makridis A., C., & Tayer, J. (2024). The big tech antitrust paradox: a reevaluation of the consumer welfare standard for digital markets. *Stanford Technology Law Review*, 71.
- Marshall, A. (1890). *Principles of Economics* (8th ed.). Macmillian Palgrave. <http://digamo.free.fr/marshall90.pdf>
- Müller, C. (2014). Kristen Stilt: Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt. xvi, 238 pp. Oxford: Oxford University Press, 2011. £55. ISBN 978 0 19 960243 8. *Bulletin of the School of Oriental and African Studies*, 77(1), 217–220. <https://doi.org/10.1017/S0041977X13001079>
- Nicolaïdes, P. A. (2015). *State Aid: Uncovered*. Oxford University Press.
- OECD. (2011). *The Regulated Conduct Defence* (116; Roundtables on Competition Policy Series).
- OECD. (2024). *Competition Policy in Digital Markets*. OECD Publishing. <https://doi.org/10.1787/80552a33-cn>
- Olivelle, P. (2013). *King, Governance, and Law in Ancient India: Kautilya's Arthaśāstra* . Oxford University Press.
- Portuese, A. (2022). Biden Antitrust: The Paradox of the New Antitrust Populism. *George Mason Law Review*, 29(4).
- Posner, R. A. (1976). *Antitrust Law*. University of Chicago Press.
- Quigley, C. (2015). *European State Aid Law and Policy* (3rd ed.). Hart Publishing.
- Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on Foreign Subsidies Distorting the Internal Market, Pub. L. No. 2022/2560, Official Journal of the European Union (2022).

- Rekabet Kurumu. (2023). *Dijital Dönüşümün Rekabet Hukukuna Yansımaları*. Rekabet Kurumu Yayınları . <https://www.rekabet.gov.tr/Dosya/dijital-piyasalar-calisma-metni.pdf>
- Ricardo, D. (2008). *Siyasal İktisadın ve Vergilendirmenin İlkeleri* (7th ed.). Türkiye İş Bankası Yayınları.
- Rodrik, D. (2004). *Industrial Policy for the Twenty-First Century* (RWP04-047; KSG Faculty Research Working Paper Series).
- Rostovtzeff, M. (1957). *The Social and Economic History of the Roman Empire* (2nd ed.). Oxford University Press.
- Salop, S. C., & T. Scheffman, D. (1983). Raising Rivals' Costs . *American Economic Review* , 73(2).
- Sarıççek, C. (2012). *Düzenlenen Ekonomik Davranış Doktrini Çerçevesinde Rekabet Hukuku Uygulamaları* (136; Uzmanlık Tezleri Serisi).
- Smith, A. (2022). *Milletlerin Zenginliği: Doğası ve Nedenleri Üzerine Bir İnceleme* (Vol. 1). Liberus Yayınları.
- Smizer, E. C. (2021). Epic Games v. Apple: T . Apple: Tech-Tying and the F ying and the Future of Antitrust. *Loyola of Los Angeles Entertainment Law Review*, 41(3). <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1646&context=elr>
- Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911) (1911).
- Sykes, A. O. (2003). *Unbound The Economics of WTO Rules on Subsidies and Countervailing*. http://www.law.uchicago.edu/Lawecon/index.htmlhttp://ssrn.com/abstract_id=415789
- Thorelli, H. B. (1955). *The Federal Antitrust Policy*. Johns Hopkins Press.
- Töre Sivrioğlu, U. (2013). İbn Teymiyye`nin Siyaset, Hukuk ve İktisat Teorisi. *Journal of Management and Economics Research*, 20, 88–104. <https://doi.org/10.11611/JMER37>
- Trebilcock, M. J. (2005). Regulated Conduct and the Competition Act. *Canadian Business Law Journal*, 41(1).
- Turgut, S. (2021). Rekabet Hukukunda Muafiyet. *Türkiye Adalet Akademisi Dergisi* , 12(46).
- United States v. American Tobacco Co., 221 U.S. 106 (1911) (1911).
- Viner, J. (1937). *Studies in the Theory of International Trade* . George Allen & Unwin LTD.
- Viner, J. (1960). *Studies in the Theory of International Trade* . George Allen & Unwin LTD.
- Zucman, G., Fagan, T. L., & Piketty, T. (2015). The Hidden Wealth of Nations. In *The Hidden Wealth of Nations*. University of Chicago Press. <https://doi.org/10.7208/chicago/9780226245560.001.0001>