

Cross-border collusion of computers? : Challenges for younger and smaller competition authorities

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The problem: E-commerce, the Algorithm Economy & Competition Policy

"Competition is for losers" *Peter Thiel, a co-founder of PayPal payments system & the first outside investor in Facebook.*

"The rise of artificial intelligence and powerful algorithms may instead create more **durable cartels** that are able to maintain higher prices at consumers' expense and in defiance of traditional enforcement regimes". Policing Digital Cartels. Financial Times. 8 January 2017

- International cartelization are becoming regular practices for algorithms-driven companies of the digital economy driven by international e-trade (e.g. Topkins-US)
- Promises of the sharing and digital economy (greater innovation, lower informational and transactional costs, greater market contestability) are vanishing away, substituted by a more tantalizing trend of market eviction and market monopolization via data control of algorithms.

- Cross-border collusion of computers?: data-driven algorithms can now quickly monitor competitors' prices and adjust their own prices accordingly. So what is seemingly beneficial—increased price transparency—ironically can end up harming consumers. Ezrachi & Stucke "Virtual Competition" Harvard University Press (2016)

The problem: Factors that may facilitate online Cross-Border Cartels (CBCs)

- Internationalization strategies of e-commerce firms classified into four categories:
 - i) single standalone web sites (JD.com - Domestic website)
 - ii) dedicated web sites targeted at overseas buyers (Alibaba - B2B & B2C)
 - iii) customized web sites in different countries (Amazon)
 - iv) establishing a market place for foreign retailers (Tmall of Alibaba)
- Pricing algorithms: have the potential to enable anti-competitive outcomes:
 - company actively seeks to ‘rig the system’ by manipulating the algorithm (Trod, GB Eye and Topkins),
 - Where no such explicitly anti-competitive behaviour exists and instead competing algorithms (deep learning, increased visibility of the market) determine that tacit collusion

Research questions

- Should younger and smaller competition agencies adopt a ‘wait & see approach’ vis-à-vis the emerging enforcement of larger or older competition agencies?
- Are younger or smaller competition agencies ready to adopt a proactive approach in order to face the challenges of these algorithms-driven companies?
- Should emerging nations’ competition authorities be concerned with these firms’ anticompetitive practices or should these concerns remain the developed economies’ sole concerns?

RESPONSE OF THE INTERNATIONAL COMMUNITY TO CBCS AND E-COMMERCE

“we will not tolerate anticompetitive conduct, whether it occurs in a smoke-filled room or over the Internet using complex pricing algorithm” Bill Baer, Assistant Attorney General US DoJ, 6 April 2015

“as competition enforcers, I think we need to make it very clear that companies can’t escape responsibility for collusion by hiding behind a computer program” Margrethe Vestager, EU Competition Commissioner, 16 March 2017

- New competition laws and institutions in emerging economies
- Almost 140 jurisdictions count with competition laws and institutions
- Many cooperation agreements between competition authorities
- Informal cooperation arrangements
- Unilateral application of competition laws

YOUNGER AND SMALLER COMPETITION REGIMES

- Less developed competition culture
- Limited access to internet
- Too weak to deter multinational CBCs

Therefore:

- Capacity-building
- Focus on transnational and regional CBCs

Transnational CBCs

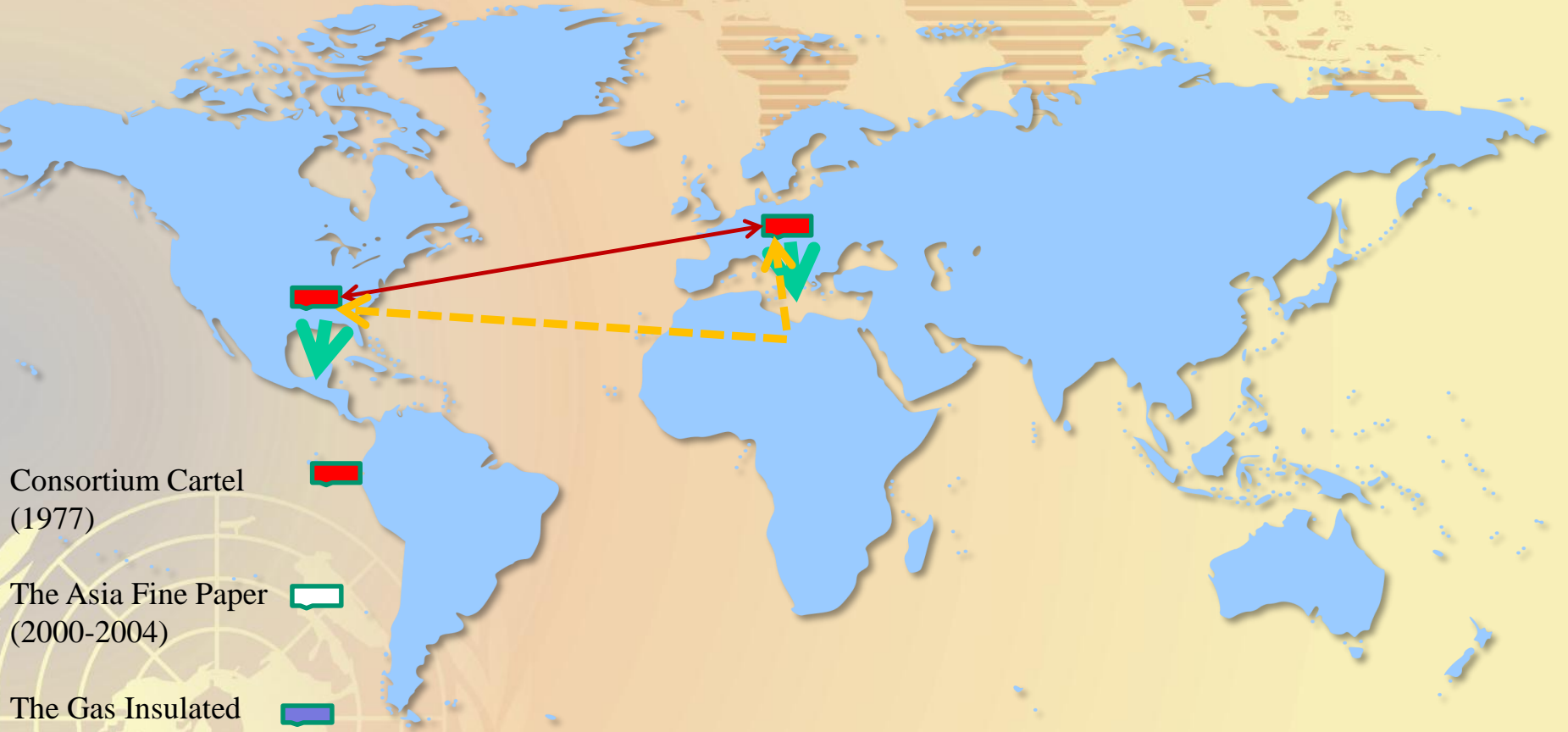
Consortium Cartel (1977) 

The Asia Fine Paper (2000-2004) 

The Gas Insulated Switchgear Cartel (1988-2004) 

Hypothetical BRICS cartel 

transnational CBCs



Consortium Cartel
(1977)



The Asia Fine Paper
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Hypothetical BRICS
cartel

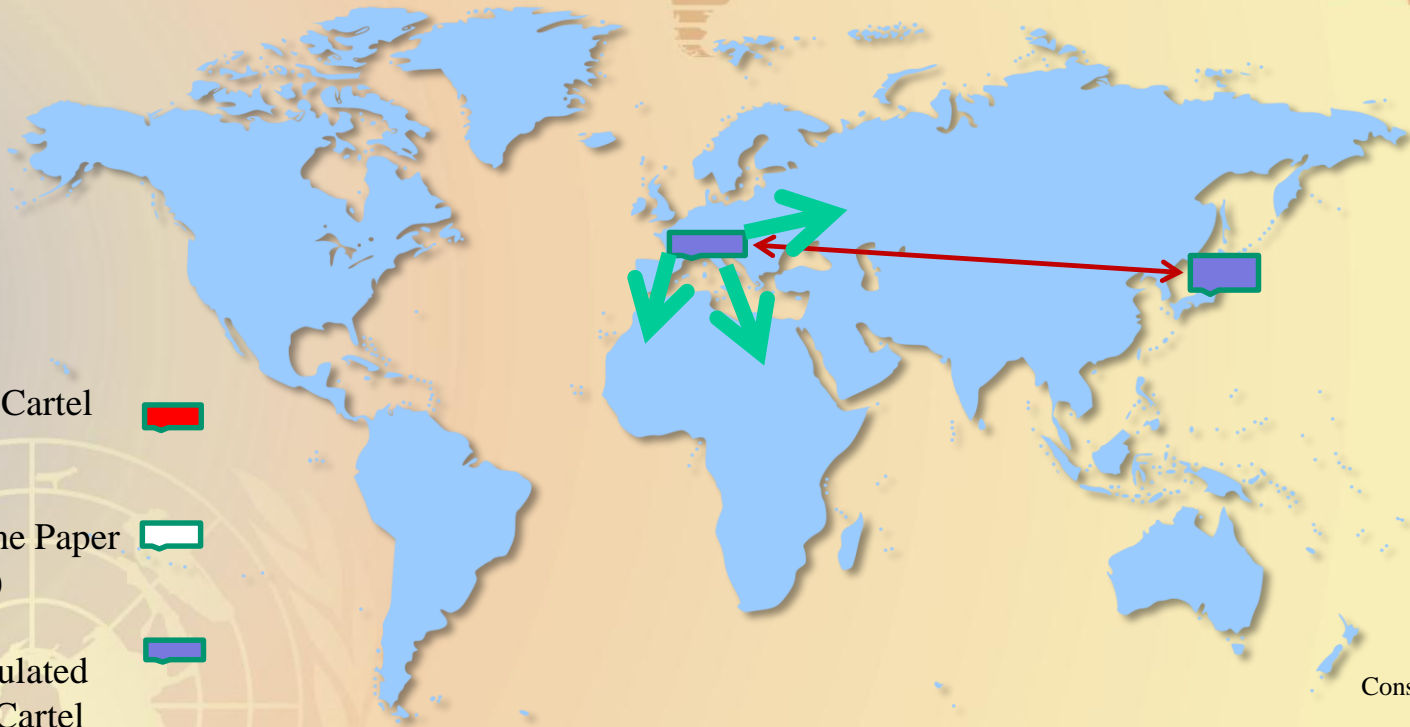


transnational CBCs

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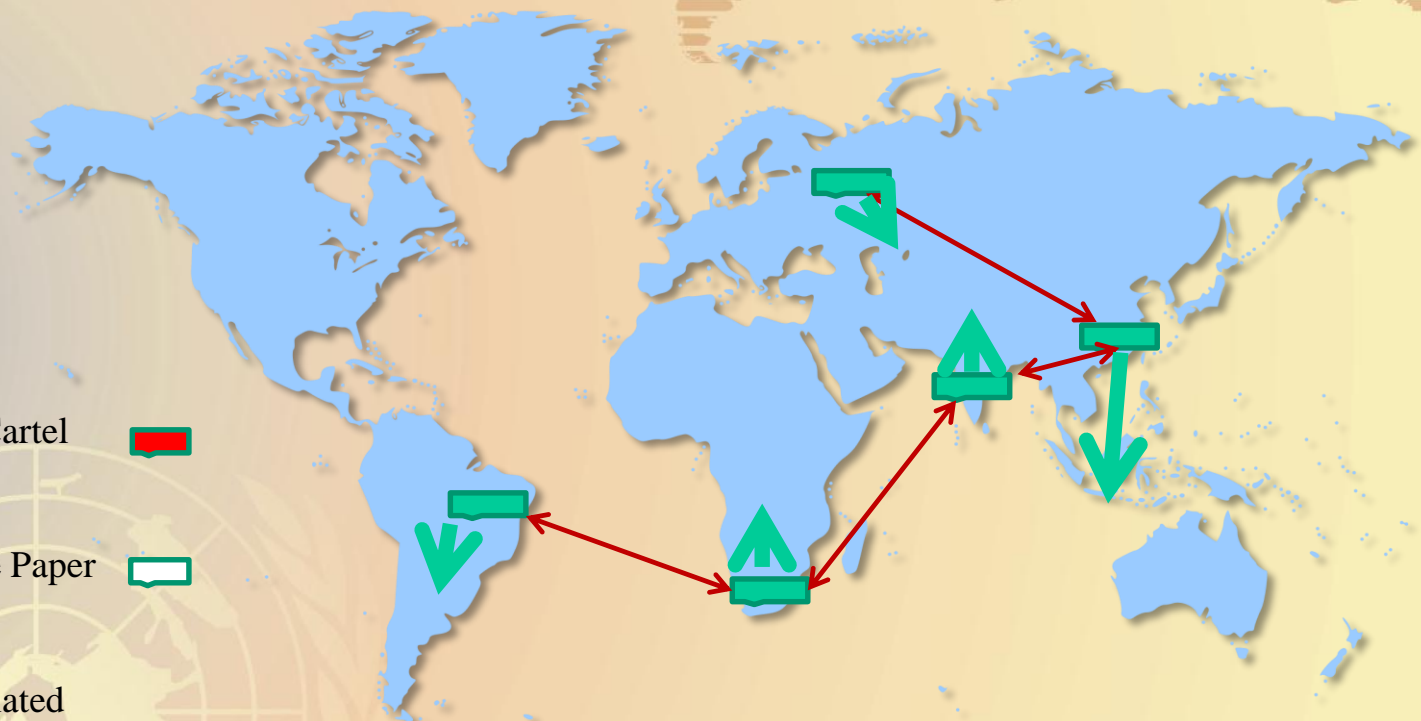
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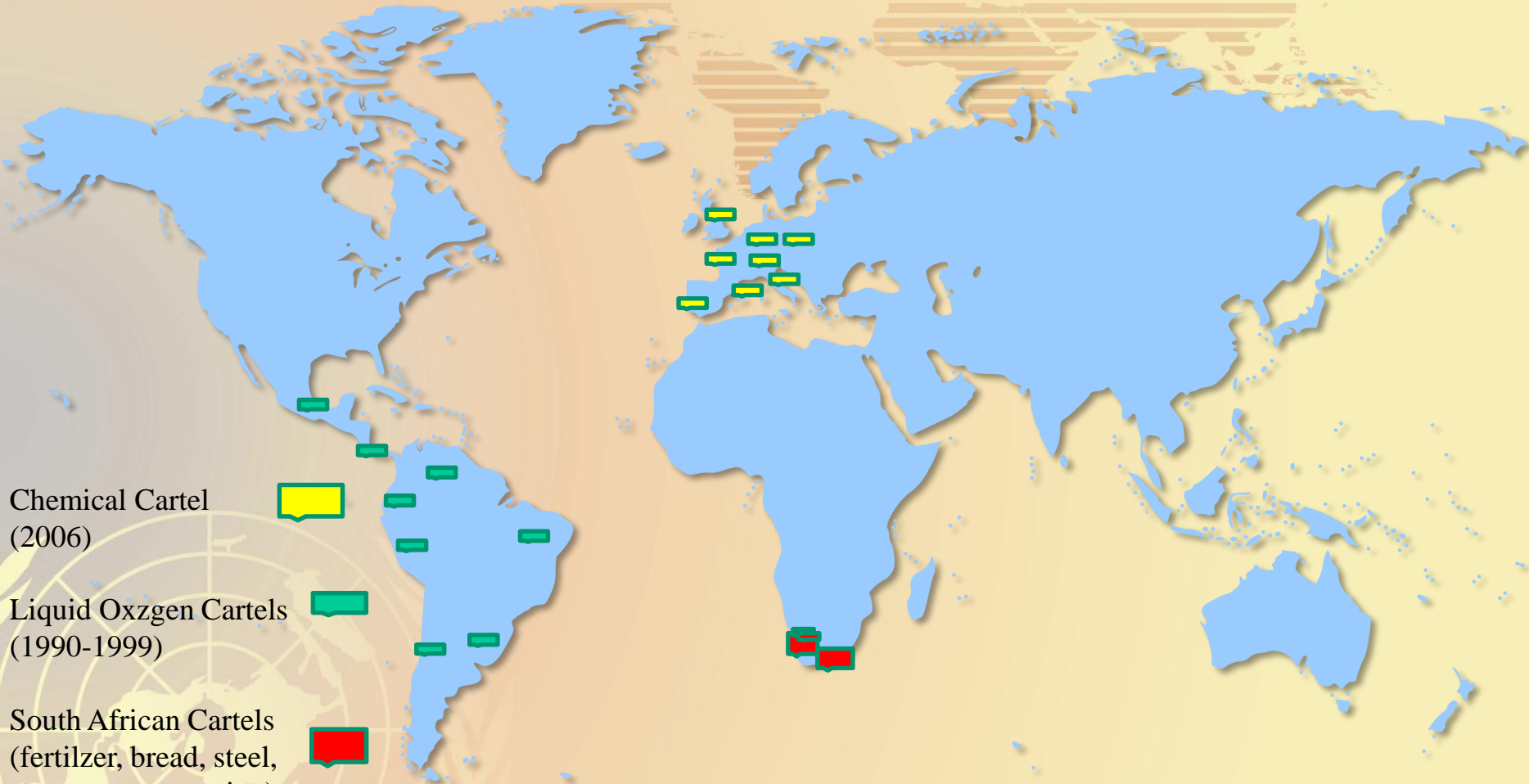
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REGIONAL CBCS



Chemical Cartel
(2006)

Liquid Oxzgen Cartels
(1990-1999)

South African Cartels
(fertilzer, bread, steel,
cement, construction)

Novel proposals

three building blocks:

(1) Trust development

(2) Exchange of “sharable” Information

(3) Use of already adopted international legal instruments

Testing the novel solutions with enforcers: results of the interviews made at the latest ICN Porto 2017

- **Trust Development:** measures to develop the first stage of trust (CBT) is to suggest activities that would close the gap between these authorities such as technical assistance and capacity building in selected beneficiary jurisdictions
- **“sharable” information:** should be provided on the basis of trust and leniency waivers. In the absence of that, “conditional information gateways”.
- **Platform (ICN & UN) :** can complement each other without additional costs to cooperation. Moving towards multilateral platforms.

Working paper published on how UN and ICN can work together:

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David & Goliath: How young competition agencies can succeed in fighting cross-border cartels

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Abstract:

How can small and young agencies cope and target cross border cartels? This paper explores the related challenges and puts forward a pragmatic tool to break down international cooperation barriers. Given the efforts of the ICN in seeking ways and means to operationalise cross-border cooperation in investigation of cases as well as those of selected UNCTAD member States in trying to trigger the international measures section of the UN Set on Competition, this brief contribution attempts to strengthen the ICN framework for non-confidential information sharing between competition agencies by incorporating specific key elements that are provided by the section F.4 related to voluntary consultations so as to address effectively the harmful effects of international cartels in emerging markets.

Keywords: competition, international cooperation, United Nations, voluntary consultations, sharing of non-confidential information

JEL codes: K21, K33, K39