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**United
Technologies**

Protectionism and Antitrust Recent Developments from the Americas and China

Panel

- **Kent Bernard** – Fordham Law School, New York
- **Olivier Antoine** – Crowell & Moring LLP, New York
- **Michaelynn Ware** – Assistant General Counsel, Antitrust UTC
- **Alfredo O'Farrell** – Marval, O'Farrell & Mairal, Buenos Aires
- **Miguel del Pino** – Marval, O'Farrell & Mairal, Buenos Aires
- **Amadeu Ribeiro** – Mattos Filho, Sao Paulo
- **Amilcar Peredo** – Basham, Ringe y Corea, Mexico City
- **Ying Yang** – Broad & Bright, Beijing

Agenda

1. Antitrust and protectionism
 - Different objectives → policy → standards
 - Protection or deterrence re national champions
 - Other concerns (*e.g.*, public interest, national security, inflation.)
2. What is at stake?
 - Favoritism towards potentially inefficient domestic industries
 - Efficient firms will not enter or invest.
 - Legitimacy of antitrust enforcers.
3. Impact on cartel enforcement, merger control and monopolization

“Enforcement in the U.S. today is less of a political football than at any time in its history.”

Bill Baer

“There is simply no room for political interference.”

Margrethe Vestager

“The real question is one of degree – where should we draw the line between the inevitable and understandable political interest in our work, and unreasonable political interference.”

Alex Chisholm

June 18, 2015 Chatham House Conference: “Politicization of Competition Policy – Myth or Reality”

Protectionism and Antitrust

3 questions

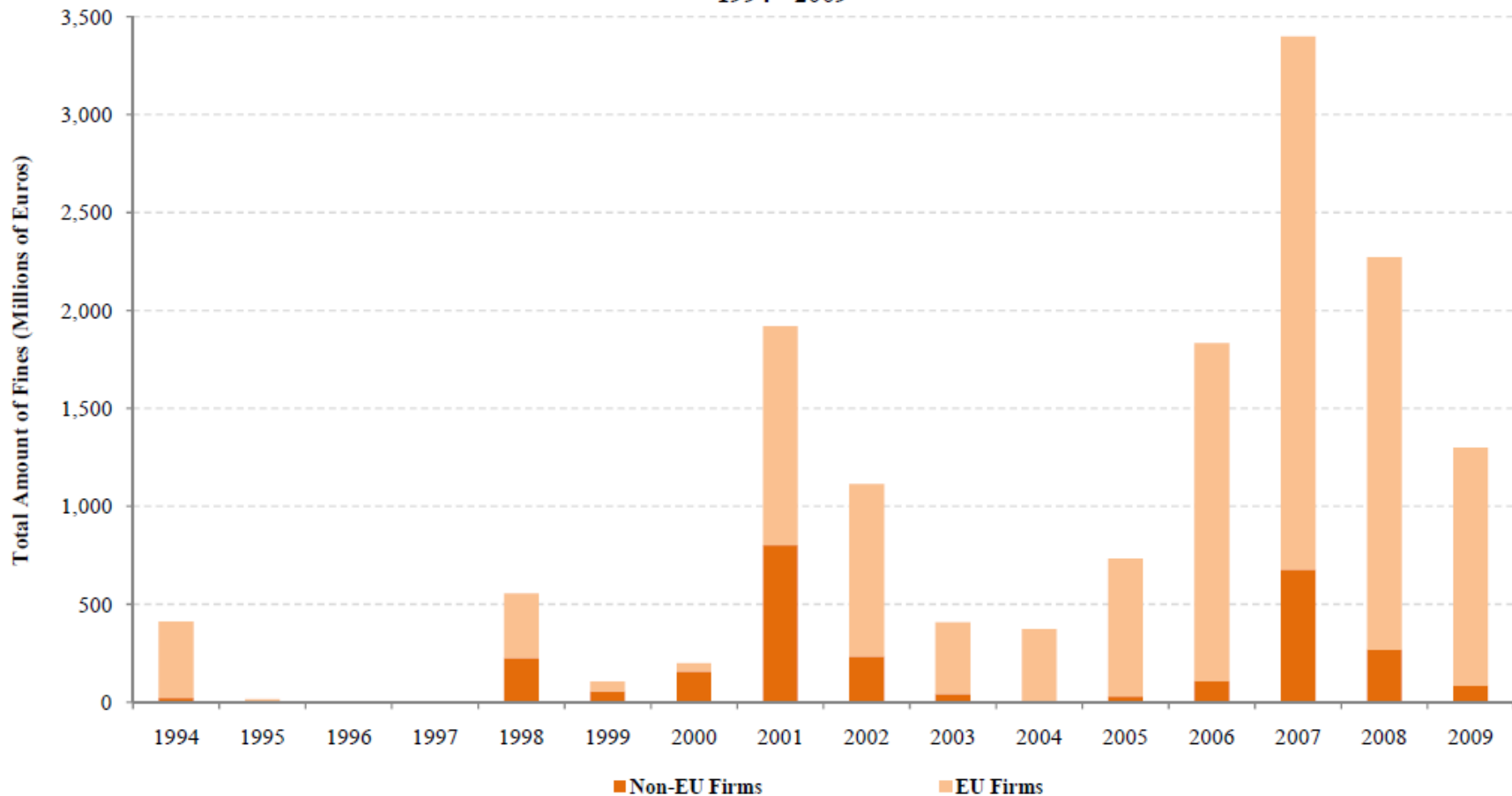
1. Is global antitrust enforcement (i) neutral; (ii) protectionist; or (iii) domestic ?
2. Risks of under- or over-enforcement?
3. Are there common trends across jurisdictions?

Cartel Enforcement

Are foreign firms more at risk of investigations, or higher fines than local firms?

EU Cartel Fines to Non-EU and EU Firms

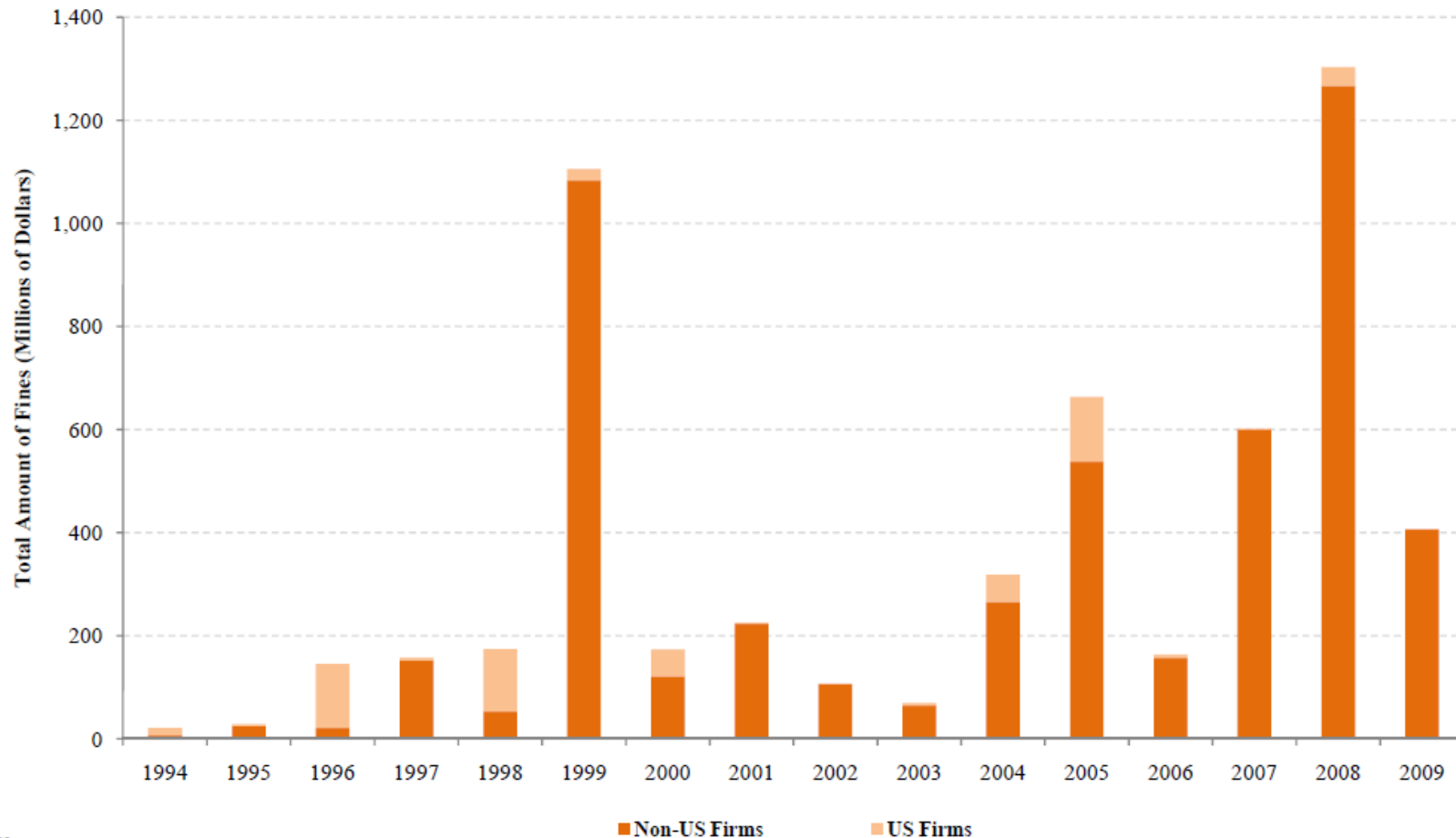
Exhibit 6
Total Amount of Fines Imposed on EU and Non-EU Firms by the European Commission
Under Article 81 (Anti-Competitive Agreements)
1994 - 2009



Source: Cremieux & Snyder, Global Antitrust Enforcement: An Empirical Assessment of the Influence of Protectionism (2010)

US Cartel Fines to Non-US and US Firms

Exhibit 8
Total Amount of Fines Imposed on US and Non-US Firms by the US DoJ
Under Section 1 of the Sherman Act (Anti-Competitive Agreements)
1994 - 2009



Source: Cremieux & Snyder, *Global Antitrust Enforcement: An Empirical Assessment of the Influence of Protectionism* (2010)

Cartel Enforcement in Brazil

- No special treatment to SOEs or domestic companies. (e.g., *Subway* and *Lava Jato* case)
- Multinational companies face increasing scrutiny in Brazil, with CADE added to the global leniency map and expanding its cooperation with foreign authorities
- 39 cartel fines in 2014: US\$1.8 billion (Cement case is \$1.3 billion)
- Record individual fines, sometimes along with behavioral and even structural penalties (e.g., the *Cement* case)
- Leniency program/settlement guidelines provide a relatively clear and transparent framework to parties interested in resolving their cases via collaboration with CADE

Cartel Enforcement in Mexico

- 2013 reform: Independence of Federal Economic Competition Commission (“COFECE”)
- No special treatment for domestic companies (*e.g.*, egg, poultry and hospital investigations)
- Auto-parts cartel fine
- COFECE is drafting new guidelines on leniency and due process

Cartel Enforcement in Argentina

- No independence of Antitrust Commission
- No special treatment for domestic companies
- No leniency regime...yet.
- Price regulation (“Precios Cuidados”).
 - 30% Annual inflation rate
 - Quarterly price negotiations with Secretary of Trade and all industry participants.
 - Investigations in Pharma, consumer goods, raw materials for industry and construction industry

Cartel Enforcement in China

27 cartel punishment decisions published as of June 10, 2015, with total fines of approx. RMB 1.6 billion

- **25 local cartels**
 - Sectors: telecommunication, insurance, tourism, gold sectors: jewelries, cement products, building materials etc
 - Fines: approx. RMB 300 million
- **2 foreign cartels**
 - Sectors: auto parts and LCD
 - Fines: approx. RMB 1.3 billion
- **Only 2 local cartels involving SOEs**
 - 27 SOEs have been investigated (23 insurance companies and 4 communication companies);
 - Fines: approx. RMB 120 million

Cartel Enforcement

	Neutral	Protectionist	Domestic
Argentina	✓	✓	
Brazil	✓		
Mexico	✓		✓
US	✓	*	✓
China		✓	✓

Merger Control

Argentina – Mexico - Brazil

- Argentina:
 - Bidas/Esso
 - British Airways/Iberia
- Mexico:
 - Aeromexico/Mexicana
 - Televisa acquisitions
- Brazil
 - CADE continued focus on gun jumping compliance, including for SOEs.
 - No special treatment for private companies (domestic or international) or SOEs...with limited exceptions.

Merger Control – China - SOEs

- A different substantive standard?
- Failure to notify enforcement
 - MOFCOM training for SOEs
 - Investigations
- Timing of clearance
 - Case acceptance
 - Review process

Merger Control

Other (non antitrust) Concerns

- Public interest concerns
 - US: Comcast/Time Warner Cable
- National security and defense
 - US: CFIUS; DOD concerns re program continuity. Military industrial base concerns and benefits.
- Other issues:
 - China: Role of trade associations in merger review
 - Argentina: Inflation/price regulations

Merger Control

	Neutral	Protectionist	Domestic
Argentina		✓	
Brazil	✓		
Mexico	✓		
US	✓	*	
China	?	✓?	

Monopolization

- Focus on homegrown monopolies:
 - US: Standard Oil, AT&T, Microsoft, Intel, Google....
 - Mexico: AMX, Pemex, Cemex
 - Brazil: Oi
- Focus on foreign-based monopolies:
 - China: Microsoft, Qualcomm
- Brazil: Google; Ericsson.
- Argentina: Google

Monopolization

	Neutral	Protectionist	Domestic
Argentina	✓	✓	
Brazil			
Mexico			✓
US	✓		✓
China		✓?	✓?