Global Competition Law Beyond Treaties: The Rise and Limits of Networks

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Abstract

In the absence of a binding international treaty, global competition law has increasingly been governed through decentralised and network-based forms of cooperation among national authorities. This paper examines how such governance operates, evaluates its effectiveness, and assesses whether it constitutes a viable long-term regulatory model rather than merely a temporary failure of legal harmonisation. It adopts a qualitative doctrinal approach, relying on critical analysis of existing scholarship and drawing on comparative and interdisciplinary literature to explore institutional practices, enforcement dynamics, and legitimacy concerns. The findings show that network-based governance has facilitated cooperation, mutual learning, and a degree of normative convergence, particularly through soft law instruments and institutional networks. However, its effectiveness remains limited by structural constraints, including disparities in enforcement capacity, lack of binding authority, and persistent asymmetries between jurisdictions. These limitations are further exacerbated by the increasing complexity of digital markets and the challenges of regulating cross-border conduct in rapidly evolving economic environments. The paper concludes that, while imperfect, governance without a treaty represents a pragmatic and evolving model, and that targeted reforms to existing networks are more feasible than pursuing a comprehensive multilateral convention.

Keywords*: global competition law, network-based governance, informal international law, digital markets, cross border enforcement.*

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1. Introduction

Global economic integration has long challenged the territorial foundations of competition law. As markets expand beyond national borders, anticompetitive conduct increasingly produces effects across multiple jurisdictions, placing pressure on domestic enforcement systems that were never designed to operate in isolation.[5] From cartels with global reach to dominant firms operating through digital platforms, competition authorities are confronted with conduct that is transnational in nature but regulated through nationally bounded legal regimes.[6] This structural tension has shaped debates in international economic law for decades and has repeatedly raised the question of whether global competition problems require global legal solutions.

Historically, proposals for a binding international competition law instrument have emerged alongside broader efforts to institutionalise global economic governance.[7] Attempts to integrate competition rules into the multilateral trading system, particularly through discussions within the World Trade Organization, reflected concerns that fragmented enforcement could distort trade and undermine market fairness.[8] Yet these efforts failed to produce consensus, largely due to divergent national priorities, concerns over sovereignty, and unequal enforcement capacities.[9] As a result, no comprehensive treaty governing global competition law has ever been adopted. In fact, in the absence of a binding convention, global competition governance has developed through alternative institutional forms. Informal and network-based arrangements, most notably the International Competition Network, have become

[5] Marek Martyniszyn, "Competitive Harm Crossing Borders: Regulatory Gaps and a Way Forward," *Journal of Competition Law & Economics* 17, no. 3 (September 13, 2021): 686–707, https://doi.org/10.1093/joclec/nhaa034.

[6] Marek Martyniszyn, "Competition Law and Policy in Crisis and the Rise of the Expansive State," *Journal of Antitrust Enforcement* (2025): jnaf020, https://doi.org/10.1093/jaenfo/jnaf020.

[7] Daniel K. Tarullo, "Norms and Institutions in Global Competition Policy," *American Journal of International Law* 94, no. 3 (2000): 478–504, https://doi.org/10.2307/2555320; Imelda Maher, "Competition Law in the International Domain: Networks as a New Form of Governance," *Journal of Law and Society* 29, no. 1 (2002): 111–136, https://doi.org/10.1111/1467-6478.00213; B. S. Chimni, "International Institutions Today: An Imperial Global State in the Making," *European Journal of International Law* 15, no. 1 (2004): 1–37, https://doi.org/10.1093/ejil/15.1.1.

[8] Robert Howse, "The World Trade Organization 20 Years On: Global Governance by Judiciary," *European Journal of International Law* 27, no. 1 (2016): 9–77, https://doi.org/10.1093/ejil/chw011.

[9] Giorgio Sacerdoti and Leonardo Borlini, "Systemic Changes in the Politicization of International Trade Relations and the Decline of the Multilateral Trading System," *German Law Journal* 24, no. 1 (2023): 17–44, https://doi.org/10.1017/glj.2023.10.

central sites for cooperation, norm diffusion, and capacity building.[10] These networks rely on voluntary participation, soft law instruments, and peer engagement rather than binding legal obligations. While often praised for their flexibility and political feasibility, such arrangements raise important questions about their ability to address increasingly complex market realities, particularly in digital and cross border contexts.[11]

This paper focuses on global competition law as it is practised without a treaty. Instead of revisiting the feasibility of a binding international convention, the analysis examines how network-based governance operates in practice and what it can realistically achieve. The emphasis is placed on understanding governance as a process shaped by institutional design, enforcement capacity, and political constraints.

Previous researches have largely focused on the convergence of competition law and the desirability of harmonisation across jurisdictions, often framing global coordination as either a legal objective or a developmental challenge. Kena Zheng and Niels Philipsen examine the growing reliance on competition soft law within the European Union, particularly in the governance of digital markets where hybrid regulatory models increasingly combine formal and informal instruments. Through an empirical law and economics analysis, they argue that soft law offers practical advantages over hard law, including lower regulatory costs, greater flexibility, and improved informational efficiency in rapidly evolving digital environments. Their findings suggest that soft law can enhance dynamic regulatory efficiency, yet the analysis remains focused on EU institutional practice.[12] Wendy Ng shifts the focus to the ASEAN region and analyses how competition laws have developed in diverse national contexts despite limited institutional capacity and differing political conditions. Through a detailed case study, she demonstrates that convergence in ASEAN competition laws was facilitated by intermediaries who translated and adapted legal norms rather than through formal legal harmonisation. Her findings highlight the importance of informal actors and processes in shaping competition law development, but they remain centred on national law formation.[13] Thomas Martin examines the relationship between global convergence and the evolution of competition law in East Asia, challenging the prevailing view that harmonisation leads to effective enforcement. By analysing Japan, South Korea, and China, he shows that formally harmonised laws often fail to achieve their objectives in practice due to domestic economic, political, and cultural constraints.[14] Taken together, these studies provide valuable insights into the

[10] Francisco Beneke and Shazana Eliza Rohr, "Transnational Competition Law Rules: A Political Economy Perspective," *Cambridge International Law Journal* 14, no. 1 (2025): 84–102, https://doi.org/10.4337/cilj.2025.01.05.

[11] Agata Jurkowska-Gomulka and Nora Memeti, "Soft Competition Law for Sustainability: Towards a Global Model?," *Global Journal of Comparative Law* 14, no. 3 (2025): 299–325, https://doi.org/10.1163/2211906X-14030003.

[12] Kena Zheng and Niels Philipsen, "Regulation of Digital Markets with Competition Soft Law—A Law and Economics Perspective," *Journal of Competition Law & Economics* 21, no. 3 (2025): 433–458, https://doi.org/10.1093/joclec/nhaf010.

[13] Wendy Ng, "From Divergence to Convergence: The Role of Intermediaries in Developing Competition Laws in ASEAN," *Journal of Antitrust Enforcement* 10, no. 1 (2022): 162–193, https://doi.org/10.1093/jaenfo/jnab014.

[14] Thomas Martin, "Is Global Convergence of Competition Law the Answer? How East Asian Challenges

limits of convergence, yet they do not directly address how global competition law is governed through network-based arrangements in the absence of a binding treaty, nor do they critically assess the structural and legitimacy limits of governance without formal legal obligation, leaving a research gap.

This paper addresses that gap by advancing the following research question: to what extent can global competition law be effectively governed without a binding international treaty, and where do the limits of such governance become apparent? The objective is to evaluate network-based governance not by reference to what it lacks, but by examining how it functions, where it struggles, and what forms of reform may be more realistic than treaty creation. The paper proceeds in four substantive sections. The first section traces the emergence of network-based governance in global competition law. The second section analyses its operational logic and institutional strengths. The third section examines its interaction with contemporary market developments, particularly in digital and cross border contexts. The fourth section identifies the structural and practical limits of governance without a treaty. The paper contributes to the literature by reframing the debate away from treaty centred solutions and towards a more grounded assessment of governance reform in global competition law.

2. Method

The research adopts a qualitative legal research method, similar to the approach employed by Bareq Lami *et al.*,[15] but adapted to the study of global competition law governance in the absence of a binding international treaty. While doctrinal legal research traditionally concentrates on analysing legal rules and principles as they formally exist, qualitative legal research allows for a broader examination of how law operates in practice, including its institutional, political, and economic dimensions. In this paper, the method is used to analyse network-based governance as a form of informal international regulation, rather than to assess the content of specific legal norms. The research therefore focuses on institutional practice, governance structures, and enforcement dynamics, drawing on interdisciplinary insights from international economic law, global governance studies, and political economy.

The data for this study were collected through an in depth literature review of scholarly articles, monographs, policy papers, and institutional reports relating to international competition law and informal governance. A keyword-based search strategy was employed, including terms such as “global competition law,” “network-based governance,” “informal international law,” “International Competition Network,” “digital competition,” and “cross border enforcement.” Sources were identified through academic databases such as Google Scholar, HeinOnline, and Scopus, alongside official publications from international and transnational bodies

Demonstrate the Limitations of the Convergence Strategy” (LL.M. thesis, University of British Columbia, 2021), https://open.library.ubc.ca/media/download/pdf/24/1.0396863/3.

[15] Bareq Lami, Safinaz Mohd. Hussein, Ramalinggam Rajamanickam, and Grace Kaka Emmanuel, “The Role of Artificial Intelligence (AI) in Shaping Data Privacy,” *International Journal of Law and Management* 68, no. 2 (2026): 296–318, https://doi.org/10.1108/IJLMA-07-2024-0242.

including the OECD, ICN, UNCTAD, WTO, and selected competition authorities. Particular attention was given to literature examining digital markets, enforcement asymmetry, and legitimacy in global economic regulation, as these issues are central to the paper's analytical focus.

To ensure the reliability and analytical relevance of the sources, a systematic document screening process was applied. First, all collected materials were assessed based on their relevance to the research question and their contribution to understanding governance without a treaty. Second, sources that were primarily descriptive, outdated, or unrelated to network-based or informal governance were excluded. Third, the remaining materials were closely examined to extract conceptual frameworks, empirical observations, and critical arguments relevant to the operation and limits of global competition governance.

3. Result and Discussion

3.1. From Failed Multilateralism to Informal Governance

The ambition to embed competition law within a multilateral legal framework emerged alongside the expansion of global trade and market integration. As international commerce deepened, anticompetitive conduct increasingly produced cross border effects that national legal systems struggled to address in isolation. Within this context, competition law was viewed as a natural complement to trade liberalisation, capable of disciplining private restraints that could undermine market access commitments under the World Trade Organization framework.[16] Early discussions therefore reflected a belief that multilateral trade governance would remain incomplete without some form of common competition discipline.

This ambition found institutional expression most clearly within the WTO, particularly through debates surrounding the so called Singapore Issues and later the Doha Development Agenda. Competition policy was framed as a mechanism to enhance the effectiveness of trade rules by addressing cartels, abuse of dominance, and state supported distortions that formal tariff reductions alone could not resolve.[17] At this stage, the multilateralisation of competition law was not presented as radical innovation, but rather as an incremental extension of existing trade governance logic. However, as negotiations progressed, the limits of this ambition became increasingly apparent. A central obstacle lay in diverging national interests and persistent sovereignty concerns,

[16] Andreas Heinemann, "La nécessité d'un droit mondial de la concurrence," *Revue internationale de droit économique* 18, no. 3 (2004): 293–324, https://doi.org/10.3917/ride.183.0293; Rolf H. Weber, "Unfinished Business: Competition Law and the WTO," in *International Economic Law and Governance: Essays in Honour of Mitsuo Matsushita*, ed. Julien Chaisse and Tsai-yu Lin (Oxford: Oxford University Press, 2016), 201–215, https://doi.org/10.1093/acprof:oso/9780198778257.003.0013.

[17] Alina Mihaela Dima, Radu Mușetescu, and Cristian Păun, "Trade and Competition Policies at the Crossroads: Conflicts and Synergies on the Long Run," *Journal of International Trade Law and Policy* 7, no. 1 (2008): 79–90, https://doi.org/10.1108/14770020810918200; Stephen Woolcock, "A Multilateral System," in *Handbook on International Political Economy*, ed. Ralph Pettman (Singapore and Hackensack, NJ: World Scientific, 2012), 121–139, https://doi.org/10.1142/9789814366984_0009.

particularly among developing countries. Many states perceived competition law as closely tied to domestic economic policy and industrial development, and therefore resisted external constraints that could limit regulatory autonomy.[18] These concerns were reinforced by fears that multilateral rules would reflect the enforcement priorities of advanced economies.

The inherent complexity of competition law further complicated multilateral negotiations. Unlike tariff schedules or quantitative restrictions, competition law encompasses a wide range of substantive and procedural questions, including merger control thresholds, standards of dominance, and enforcement discretion. This breadth made it difficult to design uniform rules capable of accommodating diverse legal traditions and market structures.[19] As a result, attempts to produce a single multilateral framework increasingly appeared ill suited to the heterogeneity of national competition regimes.

Institutional constraints within the WTO itself also played a decisive role. The consensus based decision making process, while designed to preserve member equality, proved ill equipped to resolve deep distributional disagreements over competition policy.[20] In addition, concerns emerged regarding the suitability of the WTO dispute settlement mechanism for adjudicating competition law disputes, particularly given the risk of cross retaliation in unrelated trade sectors.[21] These institutional features contributed to a growing reluctance to pursue binding commitments. Historical experience further reinforced scepticism towards multilateral solutions. Earlier failures, including the competition provisions of the Havana Charter and the eventual collapse of competition discussions within the Doha Round, generated a perception that competition law was politically incompatible with comprehensive multilateral regulation.[22] This legacy of unsuccessful initiatives weakened political momentum and encouraged key actors, most notably the United States, to favour bilateral and regional alternatives over renewed WTO based efforts.

Despite these failures, the absence of a multilateral treaty did not eliminate the practical need for coordination among competition authorities. Global markets continued to integrate, and cross border mergers, cartels, and digital platforms increasingly exposed the limits of unilateral enforcement. Rather than producing a legal vacuum, the multilateral impasse created institutional space for alternative forms of

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[18] Vladimir Obolenskiy, "Stumbling Stones in the Way of WTO Reformation," *World Economy and International Relations* 63, no. 8 (2019): 13–20, https://doi.org/10.20542/0131-2227-2019-63-8-13-20.

[19] Friedl Weiss, "Quest for a Sustainable International Investment Regime: Leveling Up Through Competition (Policy) Rules?," in *International Investment Law and Competition Law*, ed. Katia Fach Gómez, Anastasios Gourgourinis, and Catharine Titi, European Yearbook of International Economic Law (Cham: Springer, 2020), 1–24, https://doi.org/10.1007/978-3-030-33916-6_1.

[20] David A. Gantz, *Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives* (New York: Cambridge University Press, 2013), https://doi.org/10.1017/CBO9781139525282; Obolenskiy, "Stumbling Stones in the Way of WTO Reformation".

[21] Obolenskiy, "Stumbling Stones in the Way of WTO Reformation."

[22] Yo Sop Choi and Andreas Heinemann, "Competition and Trade: The Rise of Competition Law in Trade Agreements and Its Implications for the World Trading System," *World Competition* 43, no. 4 (2020): 521–542, https://doi.org/10.54648/WOCO2020026; Weber, "Unfinished Business: Competition Law and the WTO."

cooperation that avoided the political costs associated with binding legal commitments.[23] In this environment, informal and voluntary mechanisms began to assume greater importance. Soft law instruments, technical dialogue, and peer based cooperation offered a means of promoting convergence while preserving national sovereignty. Networks such as the International Competition Network emerged precisely because they could facilitate coordination without triggering the distributive conflicts that had undermined treaty negotiations.[24] Their appeal lay in flexibility, adaptability, and a deliberate avoidance of formal legal obligation. At the same time, regional and bilateral trade agreements increasingly incorporated competition chapters as a substitute for multilateral regulation. These arrangements allowed states to pursue limited harmonisation and cooperation within smaller and more homogeneous groups, thereby reducing negotiation complexity and political resistance.[25] The proliferation of such agreements illustrates how governance functions were redistributed rather than abandoned following the WTO impasse.

Therefore, the failure to formalise competition law at the multilateral level reflects not a lack of normative interest, but a convergence of political, legal, and institutional constraints that rendered treaty based solutions untenable. These constraints did not halt the evolution of global competition governance, but instead redirected it towards informal, network-based arrangements that could operate within existing limits. This historical and institutional transformation explains why global competition law today is governed without a treaty, and it provides the necessary foundation for analysing the architecture and influence of network governance in the following section.

3.2. The Architecture of Network-Based Global Competition Governance

Global competition law operates in a structural context that is unusual when compared with other areas of international economic regulation. Rather than being grounded in a comprehensive multilateral treaty or supervised by a centralised enforcement authority, it has evolved through patterns of cooperation among national competition authorities acting collectively but informally. Scholars have increasingly described this arrangement as network-based governance, a concept that captures both the decentralised nature of authority and the reliance on interaction rather than command.[26] In this setting, governance does not emerge from legal obligation but from

[23] Beneke and Rohr, "Transnational Competition Law Rules: A Political Economy Perspective."
[24] Sergio Mariotti, "'Win-Lose' Globalization and the Weaponization of Economic Policies by Nation-States," *Critical Perspectives on International Business* 20, no. 5 (2024): 638–659, https://doi.org/10.1108/cpoib-09-2023-0089.
[25] Sara Caria, "Cooperation Regimes and Hegemonic Struggle: Opportunities and Challenges for Developing Countries," *Politics and Governance* 10, no. 2 (2022): 71–81, https://doi.org/10.17645/pag.v10i2.4919.
[26] Oren Perez, "Transnational Networked Authority," *Leiden Journal of International Law* 35, no. 2 (2022): 265–293, https://doi.org/10.1017/S0922156521000728; Daniel Hodapp and André Hanelt, "Interoperability in the Era of Digital Innovation: An Information Systems Research Agenda," *Journal of Information Technology* 37, no. 4 (2022): 407–427, https://doi.org/10.1177/02683962211064304.

repeated engagement, shared professional norms, and the gradual internalisation of common standards across jurisdictions.

This network-based form of governance differs fundamentally from treaty-based or hierarchical regulatory models because it is not premised on binding commitments or enforceable sanctions. Instead, participation is voluntary, and influence flows through persuasion, learning, and reputational incentives rather than legal coercion.[27] While treaty-based systems seek legal certainty through formal rules, network-based governance accepts legal plurality and institutional diversity as a starting point. This acceptance allows competition authorities to cooperate without resolving deep political disagreements about sovereignty, development, or economic ideology, which have historically hindered the creation of a global competition treaty.[28]

The decentralised architecture of network-based governance is particularly suited to competition law because enforcement remains deeply embedded in national legal systems. National competition authorities retain exclusive jurisdiction over investigations and sanctions, yet they face increasingly transnational markets and conduct that cannot be addressed effectively in isolation.[29] Networks provide a mechanism through which authorities can coordinate approaches, share analytical frameworks, and reduce conflict without relinquishing formal autonomy.[30] In this sense, network-based governance does not replace national law but overlays it with a transnational layer of coordination that operates alongside domestic enforcement structures.

Within this broader landscape, the International Competition Network has emerged as the central institutional node of global competition governance. Established as a voluntary association of competition agencies, the ICN provides a permanent forum for dialogue and cooperation without aspiring to formal rule-making authority.[31] Its open membership structure allows participation by both developed and developing jurisdictions, which contributes to its legitimacy as a global forum [32]. At the same time, the absence of binding authority has enabled the ICN to expand rapidly without triggering the political resistance that often accompanies treaty negotiations. However, while these institutional mechanisms facilitate coordination and knowledge exchange, their reliance on voluntary engagement structurally limits their capacity to produce consistent enforcement outcomes across jurisdictions with varying capacities and priorities.

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[27] Mateusz Błachucki, *International Cooperation, Competition Authorities and Transnational Networks* (London: Routledge, 2023), https://doi.org/10.4324/9781003376002.

[28] Sol Picciotto, "Constitutionalizing Multilevel Governance?," *International Journal of Constitutional Law* 6, nos. 3–4 (2008): 457–479, https://doi.org/10.1093/icon/mon017.

[29] Imelda Maher, "Competition Law: Convergence Through Law and Networks," in *The Evolution of EU Law*, 3rd ed., ed. Paul Craig and Gráinne de Búrca (Oxford: Oxford University Press, 2021), 824–846, https://doi.org/10.1093/oso/9780192846556.003.0026.

[30] Beneke and Rohr, "Transnational Competition Law Rules: A Political Economy Perspective."

[31] Pierre Haroche, "A 'Geopolitical Commission': Supranationalism Meets Global Power Competition," *JCMS: Journal of Common Market Studies* 61, no. 4 (2023): 970–987, https://doi.org/10.1111/jcms.13440.

[32] Vellah Kedogo Kigwiru, "Why, How, and When Do National Competition Agencies Support Supranational Regional Competition Regimes? A Case of the COMESA Competition Regime," *GRUR International* 74, no. 3 (2025): 226–246, https://doi.org/10.1093/grurint/ikaf012.

The ICN's institutional design reflects the logic of network-based governance in several important ways. It operates through working groups composed of representatives from national competition authorities, supported by non-governmental advisers such as academics, practitioners, and international organisations.[33] These working groups focus on specific areas such as mergers, cartels, or unilateral conduct, allowing technical discussions to take place among officials who share similar professional expertise. This structure encourages problem-solving and knowledge exchange rather than formal bargaining, reinforcing the network's emphasis on learning and convergence.

Influence within the ICN is exercised primarily through its working methods rather than through institutional hierarchy. Decisions are taken by consensus, and outputs take the form of recommended practices, guidance documents, and analytical frameworks rather than binding rules.[34] Although these instruments are formally non-binding, they often carry significant persuasive authority because they reflect a collective agreement among experienced enforcement agencies. Over time, repeated reference to these materials in national practice contributes to their normative weight, even in the absence of legal obligation.

The role of the OECD and UNCTAD complements the ICN's activities by reinforcing convergence through parallel but distinct institutional pathways. The OECD promotes alignment among its members through recommendations, peer reviews, and policy dialogue, often targeting jurisdictions with advanced enforcement capacity.[35] UNCTAD, by contrast, places greater emphasis on inclusivity and development concerns, offering technical assistance and capacity-building to newer competition authorities through the UN Set and its Guiding Policies and Procedures.[36] Together, these institutions create a dense institutional environment in which competition norms are continuously discussed, refined, and disseminated.

Despite their differences, the ICN, OECD, and UNCTAD rely on similar mechanisms to shape convergence in the absence of binding authority. Soft law instruments, training programmes, and peer interaction serve as the primary tools through which influence is exercised.[37] These mechanisms operate by shaping how

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[33] Christopher Townley, "Where Influence Lies in the International Competition Network," in *Challenges to Assumptions in Competition Law*, ed. David Bosco and Michal S. Gal (Cheltenham, UK: Edward Elgar Publishing, 2021), 124–160, https://doi.org/10.4337/9781839109072.00013.

[34] Yane Svetiev, "The Limits of Informal International Law: Enforcement, Norm-Generation, and Learning in the ICN," in *Informal International Lawmaking*, ed. Joost Pauwelyn, Ramses A. Wessel, and Jan Wouters (Oxford: Oxford University Press, 2012), 271–294, https://doi.org/10.1093/acprof:oso/9780199658589.003.0013.

[35] Shuya Hayashi, "International Cooperation and Harmonization in Public Enforcement of the Japanese Competition Law," in *Changing Orders in International Economic Law Volume 2: A Japanese Perspective*, ed. Dai Yokomizo, Yoshizumi Tojo, and Yoshiko Naiki (London and New York: Routledge, 2023), 148–162, https://doi.org/10.4324/9781003193104-15.

[36] Rajan Dhanjee, "International Co-operation on Competition Law Enforcement: A Breakthrough?," *World Competition* 44, no. 4 (2021): 455–486, https://doi.org/10.54648/WOCO2021025; Longyue Zhao, "International Fair Competition Rules," in *Modern China and International Rules: Reconstruction and Innovation* (Singapore: Springer, 2023), 75–106, https://doi.org/10.1007/978-981-19-7576-9_4.

[37] Mary Catherine Lucey, "In the Absence of Global Antitrust Law: Looking to 'Bricks and Mortar'

competition officials understand problems, interpret economic evidence, and assess procedural fairness. Convergence thus occurs not through legal harmonisation but through the gradual alignment of professional practices and expectations across jurisdictions.

At the same time, the network-based architecture of global competition governance raises important questions about power and representation. Scholars have noted that well-resourced authorities from developed economies often play a dominant role in agenda-setting and knowledge production within networks like the ICN.[38] While formal equality is preserved through consensus-based procedures, informal influence may still shape outcomes in ways that favour particular enforcement models or economic assumptions. This tension highlights the need to distinguish between formal inclusivity and substantive equality within network-based governance structures.

Thus, the institutional architecture of network-based global competition governance reveals a system that is effective in promoting convergence but ambiguous in terms of authority and legitimacy. The ICN functions as a de facto global competition regime by coordinating practices, producing influential guidance, and fostering a shared enforcement culture, yet it does so without the legal safeguards associated with treaty-based governance.[39] This institutional reality sets the stage for a deeper normative assessment of how power is exercised within these networks, and whether their growing influence can be reconciled with principles of accountability, legitimacy, and global justice in competition law.

3.3. Power, Convergence, and Legitimacy in Network-Based Governance

Network-based global competition governance presents itself as decentralised, voluntary, and technical, yet convergence does not occur in a social or political vacuum. Rather, it is shaped by the preferences and capacities of particular actors whose influence becomes embedded in the norms and practices that circulate within transgovernmental networks.[40] The absence of a binding treaty does not eliminate power relations but instead reconfigures how they are exercised and obscured.

A first dimension of power concerns whose preferences define the content of convergence. Established competition law regimes, particularly those of the United States and the European Union, provide the dominant reference points for acceptable

Institutions and Agency Networks," *Journal of International Trade Law and Policy* 20, no. 3 (2021): 145–165, https://doi.org/10.1108/JITLP-04-2021-0023.

[38] Townley, "Where Influence Lies in the International Competition Network."

[39] Heinemann, "La Nécessité d'un Droit Mondial de La Concurrence"; Perez, "Transnational Networked Authority."

[40] Imelda Maher and Anestis Papadopoulos, "Competition Agency Networks around the World," in *Research Handbook on International Competition Law*, ed. Ariel Ezrachi (Cheltenham, UK, and Northampton, MA: Edward Elgar Publishing, 2012), 60–88, https://doi.org/10.4337/9780857934802.00011; Ioannis Lianos, "Global Governance of Antitrust and the Need for a BRICS Joint Research Platform in Competition Law and Policy," in *Competition Policy for the New Era: Insights from the BRICS Countries*, ed. Tembinkosi Bonakele, Eleanor M. Fox, and Liberty Mncube (Oxford: Oxford University Press, 2017), 51–114, https://doi.org/10.1093/oso/9780198810674.003.0005.

enforcement models and analytical standards.[41] These jurisdictions possess long-standing institutional experience and extensive resources, which allow their approaches to appear mature, neutral, and technically superior. As a result, convergence often means alignment with pre-existing Western models rather than the collective construction of plural standards that reflect diverse economic conditions. Moreover, this dynamic is reinforced by the role of multinational corporations, which participate indirectly in network-based governance through advisory roles, consultations, and epistemic influence. Their preferences often align with predictability, procedural convergence, and enforcement models that reduce compliance costs across jurisdictions.[42] While such preferences are framed as efficiency-enhancing, they also privilege market actors that already operate transnationally. In this way, convergence can normalise regulatory priorities that favour global firms over domestic developmental concerns.

Institutional capacity further conditions how power is distributed within governance networks. National competition authorities from developed jurisdictions are better positioned to participate actively in working groups, draft guidance documents, and shape informal agendas.[43] By contrast, newer or resource-constrained authorities often engage as recipients of knowledge rather than as co-producers. This asymmetry does not result from formal exclusion but from structural inequalities that affect who can speak, draft, and influence outcomes within ostensibly open networks. Indeed, the gradual transition of some emerging economies from rule-takers to rule-promoters illustrates both the possibilities and limits of network-based governance. Brazil's increasing engagement in multilateral competition networks reflects an effort to gain legitimacy and voice within global deliberative spaces.[44] China's more cautious approach, prioritising bilateral technical assistance over multilateral norm-shaping, demonstrates how domestic strategy affects participation and influence.[45] These variations suggest that convergence is not automatic but mediated by political choices and institutional priorities.

Critical scholarship, particularly the work of Eleanor Fox, challenges the assumption that convergence is inherently neutral or universally beneficial. Fox has consistently argued that global competition law must be assessed in terms of fairness, inclusivity, and distributive consequences, not only efficiency or consumer welfare.[46] From this perspective, convergence that marginalises developmental objectives or entrenches dominant market structures cannot be treated as normatively benign, even if it is procedurally voluntary.[47] Fox's critique resonates with broader concerns about the

[41] Townley, "Where Influence Lies in the International Competition Network."
[42] Maher, "Competition Law: Convergence Through Law and Networks."
[43] Maher.
[44] Lei Wang, "Domestic Regulatory Reform and Transgovernmental Networks: Brazil and China in the Global Competition Regime," *Regulation & Governance* 15, no. 3 (2021): 492–512, https://doi.org/10.1111/rego.12301.
[45] Wang.
[46] Eleanor M. Fox, "Integrating Africa by Competition and Market Policy," *Review of Industrial Organization* 60, no. 3 (2022): 305–326, https://doi.org/10.1007/s11151-022-09854-1.
[47] Eleanor M. Fox, "Inequality: The Qualified Promise of Competition Law," *Journal of Antitrust*

technocratic framing of competition law.[48] When convergence is presented as a technical exercise in best practices, political and social choices are often hidden from view.[49] Enforcement models associated with the Chicago School, for example, prioritise economic efficiency while downplaying issues of power, inequality, and market structure.[50] Treating such models as neutral standards of convergence risks reproducing their underlying normative assumptions at the global level.

David Gerber's work further deepens this critique by emphasising pluralism in global antitrust governance. Gerber argues that global competition law should accommodate diverse legal traditions, economic conditions, and social priorities rather than enforcing uniformity under the guise of convergence.[51] From this viewpoint, network-based governance has the potential to support pluralism, but only if convergence is understood as dialogue rather than alignment. However, the way convergence currently operates within informal networks often narrows rather than expands the range of acceptable approaches. Soft law instruments and recommended practices acquire authority through repetition and professional consensus, making deviation increasingly difficult for late-adopting jurisdictions.[52] Over time, voluntary standards can harden into expectations, creating pressure to conform even in the absence of legal obligation. This process illustrates how power functions through normalisation rather than coercion.

Questions of legitimacy arise sharply in this context. Network-based governance claims legitimacy through expertise, efficiency, and problem-solving capacity, rather than democratic participation.[53] While technocratic legitimacy may be attractive in a complex regulatory field, it risks marginalising public accountability and political contestation. Decisions that shape global enforcement norms are often made in closed or specialist settings, limiting transparency and broader societal input. That being said, inclusivity remains a central but unresolved challenge. Although developing and late-adopting jurisdictions formally participate in global networks, their influence varies

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Enforcement 13, no. 3 (2025): 491–506, https://doi.org/10.1093/jaenfo/jnaf009.

[48] Eleanor M. Fox, "Developing Countries, Markets, and the Coronavirus: Two Challenges," *Journal of Antitrust Enforcement* 8, no. 2 (2020): 276–279, https://doi.org/10.1093/jaenfo/jnaa018.

[49] Rory Van Loo, "In Defense of Breakups: Administering a 'Radical' Remedy," *Cornell Law Review* 105, no. 7 (2020): 1955–2022, https://scholarship.law.bu.edu/faculty_scholarship/954.

[50] Ariel Katz, "The Chicago School and the Forgotten Political Dimension of Antitrust Law," *University of Chicago Law Review* 87, no. 2 (2020): 413–458, https://chicagounbound.uchicago.edu/uclrev/vol87/iss2/6.

[51] David J. Gerber, *Competition Law and Antitrust: A Global Guide* (Oxford: Oxford University Press, 2020); David J. Gerber, "Global Competition Law Turbulence: Some Consequences for US Antitrust," *Journal of Antitrust Enforcement* 11, no. 2 (2023): 197–202, https://doi.org/10.1093/jaenfo/jnad018; Andre Fiebig and David Gerber, "The Causes and Consequences of the Neo-Brandeisian Antitrust Movement in the United States," *Zeitschrift für Wettbewerbsrecht* 19, no. 4 (2021): 460–486, https://doi.org/10.15375/zwer-2021-0405.

[52] Townley, "Where Influence Lies in the International Competition Network"; Beneke and Rohr, "Transnational Competition Law Rules: A Political Economy Perspective."

[53] Kilian Spandler, "Rethinking Democracy in Global Network Governance: Norm Polysemy, Pluralism, and Agonistic Engagement," *International Theory* 17, no. 3 (2025): 320–349, https://doi.org/10.1017/S1752971925000053.

significantly depending on resources, language, and institutional maturity.[54] Initiatives such as BRICS cooperation seek to rebalance this dynamic by articulating alternative perspectives on competition law and globalisation.[55] These efforts suggest that inclusivity requires not only access but also collective organisation and strategic engagement.

Fairness in network-based governance cannot be assessed solely by reference to procedural openness. Substantive fairness requires attention to whose interests are prioritised and whose concerns are marginalised through convergence.[56] Calls for policy convergence often originate from established regimes, yet developing economies may prioritise market access, industrial policy, or economic transformation. Without mechanisms to integrate these priorities meaningfully, convergence risks reinforcing existing global inequalities. Some scholars propose alternative legitimacy frameworks that emphasise participation, trust, and plural norm interpretation rather than uniform outcomes.[57] A participation-centred approach would evaluate legitimacy based on whether diverse jurisdictions can shape agendas and contest dominant assumptions. Similarly, multilevel governance models seek to balance coordination with respect for national autonomy, offering potential pathways toward fairer global competition governance.[58]

Consequently, convergence is produced through asymmetrical capacities and normalised through technocratic discourse, while legitimacy is claimed through expertise rather than democratic grounding. Although network-based governance enables cooperation in the absence of a treaty, it also generates normative tensions that particularly affect developing and late-adopting jurisdictions. These tensions point to structural limits within the existing governance model, which the next section will examine by focusing on the systemic constraints and unresolved contradictions of governing global competition law without a binding legal framework.

3.4. The Limits of Governance without a Treaty

The evolution of global competition law governance without a binding treaty reveals structural constraints once attention shifts from its promise to its limitations. Network-based cooperation, particularly through platforms such as the International Competition Network, relies on soft law, voluntary coordination, and shared

[54] Lianos, "Global Governance of Antitrust and the Need for a BRICS Joint Research Platform in Competition Law and Policy."
[55] Alexey Yurievich Ivanov, "BRICS and the Global Competition Law Project," in *Competition Policy for the New Era: Insights from the BRICS Countries*, ed. Tembinkosi Bonakele, Eleanor M. Fox, and Liberty Mncube (Oxford: Oxford University Press, 2017), 115–135, https://doi.org/10.1093/oso/9780198810674.003.0006.
[56] Stefan Scheuerer, "The Fairness Principle in Competition-Related Economic Law," *GRUR International* 72, no. 10 (2023): 919–932, https://doi.org/10.1093/grurint/ikad081.
[57] Spandler, "Rethinking Democracy in Global Network Governance: Norm Polysemy, Pluralism, and Agonistic Engagement."
[58] Yaning Zhang, "Limits of Law in the Multilevel System: Explaining the European Commission's Toleration of Noncompliance Concerning Pharmaceutical Parallel Trade," *JCMS: Journal of Common Market Studies* 60, no. 4 (2022): 1001–1018, https://doi.org/10.1111/jcms.13295.

professional norms rather than enforceable obligations. As noted by Michèle Knodt *et al.*, this design prioritises flexibility over coercion, but simultaneously limits regulatory reach, especially when addressing politically sensitive or complex cross-border issues.[59] While such governance enables dialogue and convergence in principle, it lacks the institutional authority necessary to ensure consistent outcomes in practice.

A central limitation lies in enforcement asymmetry. Without binding commitments, compliance depends on goodwill and reputational incentives, resulting in uneven application across jurisdictions.[60] This unevenness contributes to broader fragmentation, as states increasingly rely on bilateral or regional frameworks rather than a unified system. Choi and Heinemann demonstrate how competition provisions embedded in trade agreements develop in a piecemeal manner, often creating overlaps and inconsistencies rather than coherence.[61] Network-based governance may mitigate fragmentation through coordination, but it cannot substitute for the absence of a common legal foundation, leaving enforcement outcomes contingent on national priorities and capacities.

These structural limits are particularly visible in the regulation of digital markets, where rapid technological developments intensify coordination challenges. Instruments such as the Digital Markets Act and the Digital Services Act illustrate attempts at regulatory harmonisation, yet their implementation remains uneven across jurisdictions.[62] The borderless nature of digital activity further complicates enforcement, as divergent legal approaches to data access and platform regulation hinder effective cooperation.[63] At the same time, differences in substantive regulatory models enable regulatory arbitrage by global platforms, reinforcing fragmentation and limiting the capacity of networks to produce consistent outcomes.[64]

Beyond effectiveness, governance without a treaty raises concerns of legitimacy and structural inequality. Technocratic, network-driven processes may weaken democratic accountability, particularly where decision-making is concentrated

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[59] Michèle Knodt, Marc Ringel, and Rainer Müller, "'Harder' Soft Governance in the European Energy Union," *Journal of Environmental Policy & Planning* 22, no. 6 (2020): 787–800, https://doi.org/10.1080/1523908X.2020.1781604.

[60] Dragutin Avramović, "Soft Law and Sovereignty: From a Political to a Legal Limitation," *Pravni vjesnik* 37, nos. 3–4 (2021): 101–114, https://doi.org/10.25234/pv/15594; Or Brook, "Do EU and U.K. Antitrust 'Bite'?: A Hard Look at 'Soft' Enforcement and Negotiated Penalty Settlements," *The Antitrust Bulletin* 68, no. 3 (2023): 477–518, https://doi.org/10.1177/0003603X231180245.

[61] Choi and Heinemann, "Competition and Trade: The Rise of Competition Law in Trade Agreements and Its Implications for the World Trading System."

[62] Alexandre de Streel and Francesco Decarolis, "Implementing the DMA and DSA: Comparing National Approaches in the EU," in *The EU Digital Regulation and Its Impact on Member States*, ed. Francesco Decarolis, Barbara Marchetti, and Luisa Torchia, European Union and Its Neighbours in a Globalized World 27 (Cham: Springer, 2026), 189–199, https://doi.org/10.1007/978-3-032-06490-5_7.

[63] Murdoch Watney, "Analysing Different Approaches to Cross-Border Electronic Evidence Data-Sharing in Criminal Matters," in *Proceedings of the 14th International Conference on Cyber Warfare and Security, ICCWS 2019*, ed. Noëlle van der Waag-Cowling and Louise Leenen (Reading, UK: Academic Conferences and Publishing International Limited, 2019), 484–491.

[64] K. Hema, "AI and Data-Driven Digital Platforms: The Case for Establishing Global Minimum Standards in Competition Law," *International Review of Law, Computers & Technology* (2025): 1–22, https://doi.org/10.1080/13600869.2025.2602114.

among well-resourced authorities.[65] As Jieli Li highlights, fragmented governance frameworks often favour jurisdictions with greater regulatory capacity, exacerbating global asymmetries.[66] While treaty-based systems are not immune to similar concerns, the absence of binding commitments in network governance amplifies disparities in influence and enforcement. Overall, these dynamics suggest that the limitations of governance without a treaty stem not only from its soft-law nature, but from deeper structural inequalities, underscoring the need for reforms that balance flexibility with accountability and inclusiveness.

4. Conclusion

In conclusion, global competition law can and does function without a treaty, but only within clearly defined limits that are inherent to network-based governance itself. The absence of a binding international convention has not resulted in regulatory paralysis. Instead, it has produced a system of governance grounded in cooperation, peer learning, and soft coordination, most visibly through institutions such as the International Competition Network. This model has enabled a degree of convergence, facilitated information exchange, and supported enforcement capacity in ways that a formal treaty has historically failed to achieve. However, governance without a treaty remains structurally constrained in its ability to deliver consistent enforcement, address cross border digital market power, and ensure legitimacy across jurisdictions with unequal resources and influence. The rise of network-based governance therefore represents not an alternative path to full legal integration, but a pragmatic response to political fragmentation that allows global competition law to operate, albeit imperfectly, in the absence of formal multilateral commitment.

From a broader perspective, the findings invite a reframing of the long standing debate on global competition governance. Rather than returning to the question of whether a treaty is desirable or feasible, the more pressing challenge lies in improving the quality, inclusiveness, and accountability of existing governance networks. The limits identified in this paper do not indicate failure, but they do expose the risks of complacency in relying on informal mechanisms alone. As global markets become more digital, asymmetric, and politically contested, the legitimacy of competition governance will increasingly depend on whether network-based institutions can adapt without reproducing structural inequalities or technocratic distance. The future of global competition law is therefore likely to be shaped less by grand constitutional projects and more by incremental governance reform that strengthens cooperation while remaining attentive to power, participation, and fairness.

[65] Beneke and Rohr, "Transnational Competition Law Rules: A Political Economy Perspective".
[66] Jieli Li, "Governing High-Risk Technologies in a Fragmented World: Geopolitical Tensions, Regulatory Gaps, and Institutional Barriers to Global Cooperation," *Fudan Journal of the Humanities and Social Sciences* 19 (2026): 113–137, https://doi.org/10.1007/s40647-025-00445-4.

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