

# Developments in International Enforcement Co-operation

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# Overview

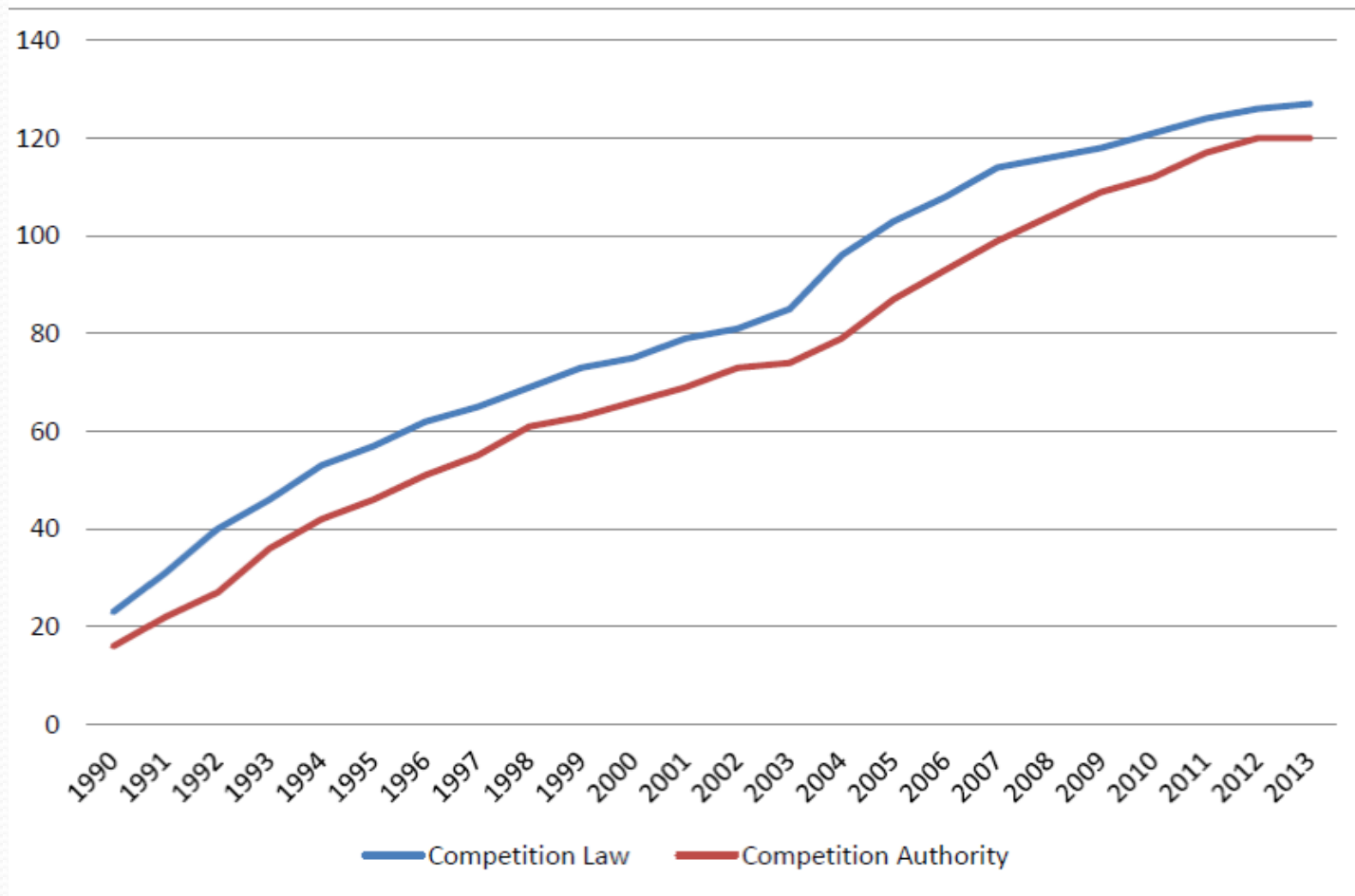
- Reasons for international co-operation
- Challenges for international enforcement co-operation
- Recent multilateral, regional and bilateral developments
- Future directions for international co-operation
- How to promote effective international co-operation – what can authorities do?

# Significance of international co-operation

- The number of jurisdictions with competition law has increased significantly
- Globalisation of the economy
- Internationalisation of antitrust infringements
- Risks of divergent decisions
- Need to access information and evidence in other countries
- Driver for international co-operation:
  - Multi jurisdictional merger filings
  - Proliferation of leniency programs

# More competition laws

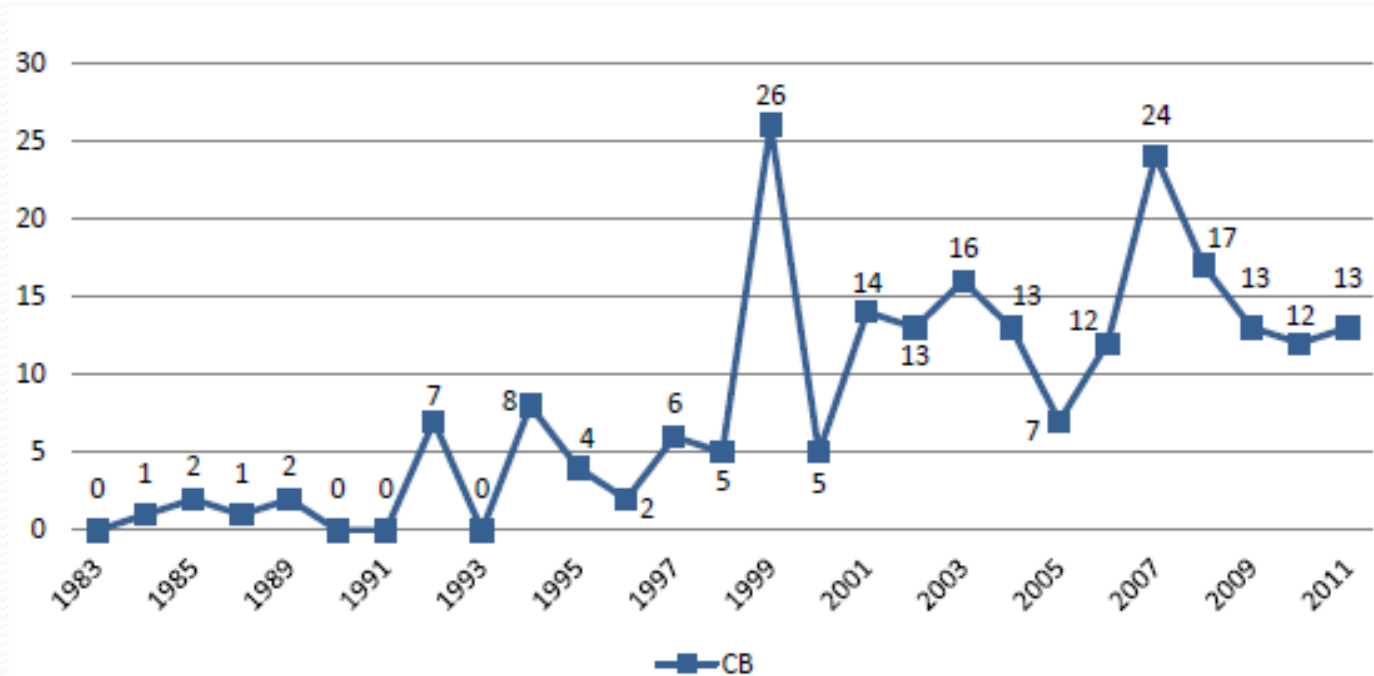
## More competition agencies



# Globalisation of the world economy

- 1995: co-operation between the US, EU and Japan covered approximately 66% of world GDP – and about 95% of the GDP of countries with competition law
- 2014: the same trilateral co-operation covers only about 50% of world GDP
- By 2030 – on reasonable projections , these economies will account for only 35% of world GDP
- Beyond 2030 - to reach 66% of world GDP will require at least 5 jurisdictions to co-operate
- To reach 95% of those covered by competition law will require over 100 jurisdictions to co-operate

# More cross border cases

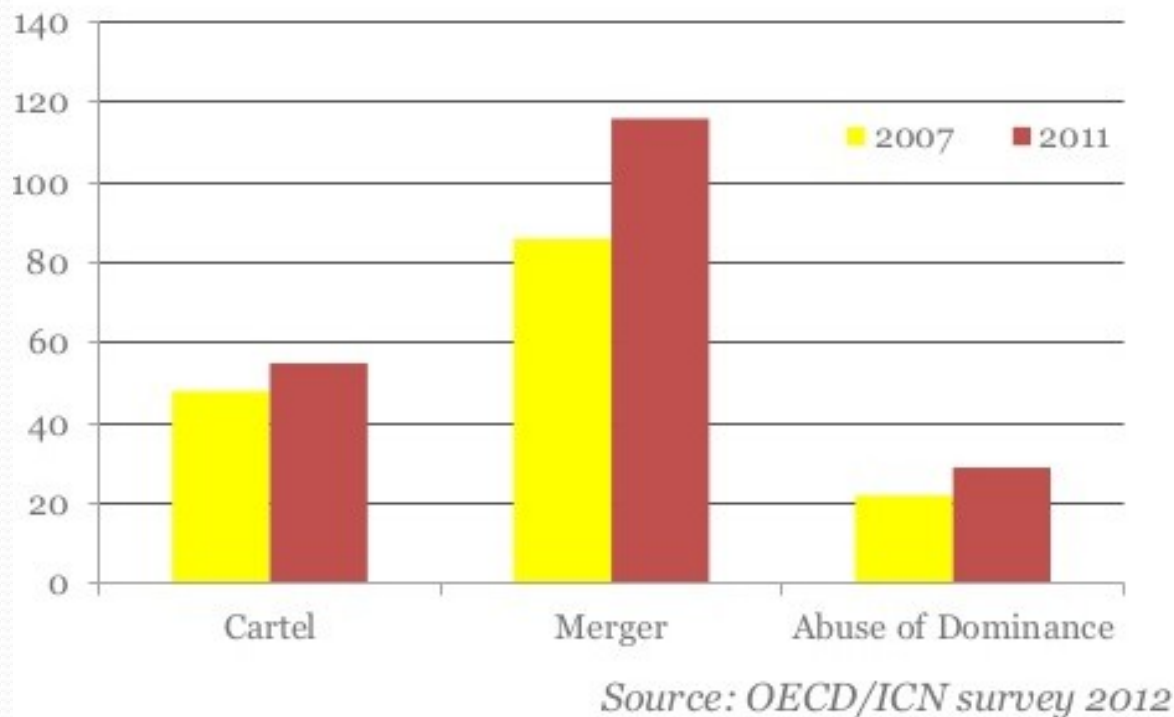


Number of cross border cartel cases revealed per year

source OECD

# More cross-border co-operation... ...but limited to a few agencies

Cases  
involving  
cross-  
border co-  
operation  
over 5 year  
period



But only 13 agencies (out of 29 who responded) had co-operated more than 5 times (outside regional co-operation) and 26 had never co-operated

# The two worlds of international co-operation

## International enforcement co-operation

- Mergers
- Behavioural cases



## Exchange on policy developments and capacity building

- ICN, OECD, UNCTAD, ASEAN, etc.
- Outreach and capacity building



# Legal basis for international enforcement co-operation

- **Formal** cooperation on cases
  - Co-operation based on provisions in national law
  - Co-operation based on non-competition specific agreements and instruments: mutual legal assistance agreements (MLAT), competition related provisions in bilateral free trade agreements (FTAs), letters rogatory
  - Co-operation based on competition-specific agreements
  - Co-operation based on waivers
  - Co-operation based on amnesty/leniency programs
- Significant degree of **informal** co-operation

# The international co-operation debate

- Legal restrictions and absence of legal basis
- Constraints related to exchange of confidential information
- Limitations on admissibility and use of the information exchanged
- Complexity and duration of co-operation procedures
- Procedural differences and different enforcement powers
- Limits with waivers
- Practical limitations (lack of resource, language, etc.)

# Promoting international enforcement co-operation: multilateral developments

- New OECD Recommendation on International Co-operation on Competition Investigations and Proceedings – adopted 16 September 2014
  - Adoption of national provisions to allow exchange of confidential information through information gateways
  - Investigative assistance
  - Minimise impact of legislation that could restrict co-operation
  - Strengthen mechanisms of notification when investigation / proceeding expected to affect another jurisdiction's important interests
  - Facilitate co-ordination of investigations: align timetables, discuss analysis and the design/implementation of remedies
- ICN:
  - 2014: Model confidentiality waiver for cartel investigations
  - Recommended Practices for Merger Notification and Review Procedures
- UNCTAD:
  - 2013: Database on competition cases

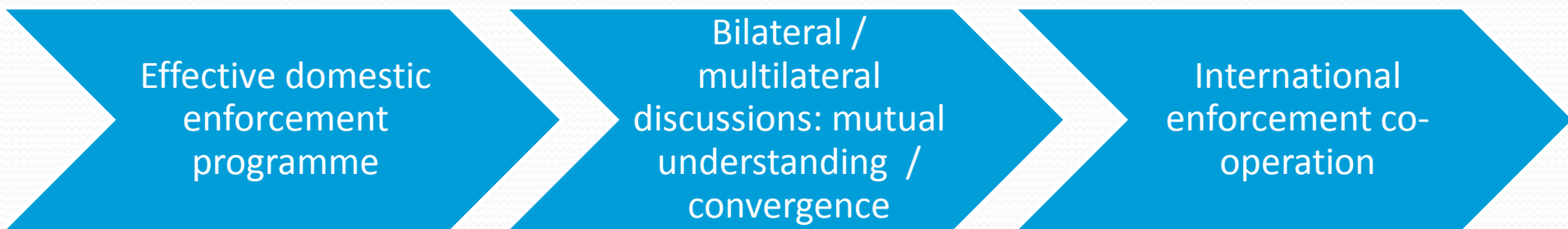
# Promoting international enforcement co-operation: regional and bilateral developments

- Regional:
  - European Competition Network
  - COMESA Competition Commission
- Bilateral agreements:
  - 2014 USA-Colombia Agreement on Antitrust Co-operation
  - EU: stronger provisions on competition in recent Free Trade Agreements (FTA)
    - EU-Singapore FTA
    - EU-Korea FTA

# Longer term possibilities?

- Multilateral instruments
  - One-stop shop for leniency markers?
- New means of enhanced co-operation
  - Non-binding deference to a lead authority?
  - Mutual recognition of another authority's decision
- Importance of procedural rights
  - Harmonisation?

# International co-operation: a step-by-step process



**Key:** building confidence and trust between enforcement authorities and between authorities and business

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