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## “Asian transparency”

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## ABSTRACT

*While transparency is valued in the West, in East-Asian countries secrecy is more valued – transparency is seen as weakness in dealings with both business and government. Simply preaching transparency is unlikely to have much effect unless we understand why secrecy is so important.*

Contrairement aux pays occidentaux où la transparence est valorisée, dans les pays de l'Asie de l'Est, c'est plutôt la confidentialité qui est de mise. La transparence est perçue comme une faiblesse tant dans les affaires que dans la vie publique. Par conséquent, il est inutile de prôner la transparence sans comprendre au préalable pourquoi la confidentialité est si importante.

Economists usually ignore differences in beliefs between countries - which has been described as “cultural nullity” (Jones, Eric L. “Culture and its Relationship to Economic Change” 151(2) *Journal of Institutional and Theoretical Economics* (1995) pp. 269-85). Thus formalism (economic theory has universal scope) trumped the debate during the 1960s over substantivism (each culture has its own values that cannot be analysed by a universal economics). Thus economics carry across analytical tools and solutions to other countries without change. However, if one is interested in studying competitive markets it makes sense to study the interactions of individuals in the actual market place – which may operate differently across cultures – but this is a difficult task.

**“Cultural values such as secrecy are important to competition law design and enforcement”**

Rather than focus on individual interactions, economists overcome the complexity of individual transactions by studying markets in aggregate – which is easier because individual preferences, negotiating skills etc. become less important. Instead, market participants cease

to negotiate individually and are seen as participating anonymously – by simply responding to a posted price where quality is not of great importance. Of course, in markets, individual actions depend on beliefs about how others will act – which is influenced by culture and belief.

However, economic models of competition can provide considerable insights into competitive processes across different cultural contexts - largely because economic models assume people are self-interested and behave rationally in pursuit of their self-interest. So demand curves will almost always slope downwards to the right – individual preferences, negotiating and enforcement costs are unlikely to change the direction of the predicted change. But do models developed in mathematical isolation provide sufficiently rich explanations for explaining the political economy of the introduction of competition law or the likely response?

If different beliefs and cultures are important to competition, then ignoring them may lead to the wrong design and enforcement of competition law. In countries with a greater acceptance of hierarchy (often based on religion), the absence of rights or the inability to enforce any rights against those further up the hierarchical tree are likely

to be non-existent. In the absence of practical legal rights and remedies, businesses adapt to protect their (often family) assets. Trust in such a system is likely to be low and secrecy valued and pervasive. Business organizations will be designed to maintain assets through secret diversification of family assets across countries and markets, tight family control and family networks which operate independently of established markets. The question is whether there are sufficient differences to make a difference to competition law.

Much has been written about the ‘cultural’ characteristics of the Overseas Chinese in Southeast Asia. These characteristics include the prevalence of family conglomerates where family members and assets are widely dispersed across industries and countries but subject to tight family control from the top, a paramount concern with secrecy, and a concern more with developing personal contacts and networks than operating in open markets. While ‘cultural’ these characteristics can be explained in rational economic and historical terms – for example, the need to protect family assets from predatory governments in China, particularly during the uncertain times at the end of the Qing Dynasty, the new republican government and subsequent Japanese occupation as well as in their new countries in Southeast Asia.

If there are important differences in belief and culture then we should look at the *actual* beliefs, practices and culture in the country under examination, and not simply make assumptions about competition law enforcement based on our own beliefs and prejudices. As the great French historian of the nineteenth century, in looking at ancient Greece and Rome, put it: “If we desire to understand antiquity, our first rule should be to support ourselves upon the evidence that comes from ancients” (Fustel de Coulanges, N.D. *The Ancient City* no date, New York, quoted in Siedentop, Larry *Inventing the Individual: The Origins of Western Liberalism* (2015) Penguin Books p.10). So we should determine whether different cultures and beliefs matter to our understanding of competitive process and competition law in the particular circumstances – not simply assume them.

Secrecy may be of considerable cultural significance. Differences in attitudes towards secrecy are important to attitudes towards competition and competition law enforcement. Many see regulatory transparency as crucial to competition law enforcement but concerns have been expressed recently about lack of transparency in Asia (See, for example, Sokol, D. Daniel “Due Process, Transparency and Procedural Fairness in Asian Antitrust” (2014) *Competition Policy International*). Transparency is widely seen as desirable because it contributes to “greater political

legitimacy for the enforcement of decisions both domestically and internationally ... at its core, transparency and due process are inputs that lead to better outputs” (Ibid, pp 4-5). Similarly, complete (or as close as possible) information is seen as important to achieving economic efficiency. Neoclassical models of competition, for tractability, usually assume either complete information (such as the model of perfect competition) or a greater degree than is normally encountered in business decision-making. Information is seen in terms as a good, independent of institutional factors that may determine the likelihood of information production and its access.

### “The continuation of older business structures and ways of doing business (including secrecy) in Asia despite better business laws and their enforcement is difficult to explain”

Witt and Redding argue that: “Asian business systems (except Japan) cannot be understood through categories identified in the West” (Witt, Michael A., & Gordon Redding (2013). “Asian Business Systems: Institutional Comparison, Clusters, and Implications for Varieties of Capitalism and Business Systems Theory. *Socio-Economic Review*, 11, 2. *INSEAD Working Paper No. 2013/05/EPS/EFE*, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2104088](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2104088) at p. 265.). A considerable amount of research has been undertaken on the structure and business conduct of Chinese firms, noting their reliance on personal contacts and secrecy in their dealings and in their accounts. It can be argued these reflect differences in approach to business (following Sun Tzu, business strategies are seen similarly seen to war – where deception plays an important strategic part) or simply rational responses to risky circumstances (predatory governments and uncertain legal environment). However, explaining the persistence of these company structures and conduct (including secrecy) in recent, less risky times is more difficult to explain.

Some have attempted to explain why secrecy and other cultural factors may be more important in East Asia. Institutional economists like Mayhew argue that we are necessarily constrained by our cultural background (Mayhew, Anne “Culture: Core Concept under Attack” 21(1) *Journal of Economic Issues* (1987), pp 587-603). Institutional economics does not see individuals as given but rather influenced by cultural and institutional factors (Lawson, Tony “The Nature of Institutional Economics” 2(1) *Evol. Inst. Econ. Rev.* (2005), pp. 7-20). Another possible approach, more directly relevant to Asia, follows on from those

who examine actual business practices, beliefs and economic growth in East Asia. For example, Gray (1988) used Hofstede's structural model of culture to argue that:

"A preference for secrecy is consistent with strong uncertainty avoidance following from a need to restrict information disclosures so as to avoid conflict and competition and to preserve security. A close relationship with power distance also seems likely in that high power-distance societies are likely to be characterized by the restriction of information to preserve power inequalities. Secrecy is also consistent with a preference for collectivism, as opposed to individualism, with its concern for those closely involved with the firm rather than external parties" (Gray, S.J. "Towards a Theory of Culture Influence on the Development of Accounting Systems Internationally" 24(1) *Abacus* (1988) pp. 1-15 at p. 11).

While it can be expected that Asian companies will in general be more secretive in their own countries (Hooi, George "The Effects of Culture on International Banking Disclosure" 14 *Asia-Pacific*

*Journal of Accounting and Economics* (2007) pp. 7-25), some empirical research indicates, in a study of 68 Asian companies listed on the NYSE/NASDAQ that report to the SEC, that these companies "whose domestic culture is more secretive are providing less readable financial statements ... despite the fact that a large number of these companies are using IFRS and U.S. GAAP to prepare their financial statements" (Kumar, Gaurav "Determinants of Readability of Financial Reports of U.S. Listed Asian Companies 6(2) *Asian Journal of Finance and Accounting* (2014) pp. 1- 18 at p. 1. Available at: <http://dx.doi.org/10.5296/ajfa.v6i2.5695>).

So, secrecy appears to be more valued in East Asia in both business and in government than in the West. Because cultures change slowly, simply preaching values such as transparency are unlikely to change cultural traits in the short term. So what to do? Perhaps the best way to start is to try and understand, empirically, why secrecy is so highly valued in Asia and then examine the implications for competition law. ■

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