

Monty Graham's Contributions to the Evolution of "Global" Competition Policies

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An Introductory Tribute

Monty Graham's colleagues and admiring readers will miss him tremendously.

To his seasoned colleagues, including coauthors, he was earnest and astute, focused when necessary and never too proud to dig for detail, yet randomly garrulous and always an anxiously zany polymath. To his younger colleagues, he was energetic, dashing, young-at-heart, wryly irreverent, encouraging, engaging, and caring.

To his public admirers, Monty is best known for his seasoned, sustained, and patient writing on foreign direct investment, as emphasized in Fred Bergsten's invitation letter to today's celebration in Monty's memory.

But I want to commend Monty for a less well-appreciated contribution. A side project he undertook in the 1990s was prescient in its vision. That vision in turn helped birth the International Competition Network (ICN), about to enter its 7th year of growing success, with membership currently from more than 80 countries at all stages of development.¹ And that vision (and the ICN) helped birth a serious "stealth" literature that expands and deepens almost daily. Simon Evenett, here today, is one among an impressive group of long-distance runners with Monty's vision.

The side project was on cross-border competition policies. Monty and I pursued it jointly with a large group of cooperative contributors. Our Peterson Institute book, policy analysis,² and subsequent papers on "global" competition policies covered investment indeed—it was a side road for Monty, not a detour—but also goods and services trade.

Monty's distinctive tasks in this Institute project were the policy design and, as the project developed, the global coordination necessary to line up and integrate our impressive group of cooperating authors. Both tasks played to Monty's strengths, as judicious observer, pragmatic policy designer, and gregarious networker.

¹ The ICN's website is www.internationalcompetitionnetwork.org. Mario Monti's 2006 Niarchos Lecture at the Peterson Institute for International Economics outlines the ICN's history in the broader context of evolving cross-border competition policy, in the European Union and elsewhere.

² *Global Competition Policy*, Edward M. Graham and J. David Richardson, eds., Washington: [Peterson] Institute for International Economics, December 1997, and our jointly authored Institute policy analysis *Competition Policies for the Global Economy*, Policy Analyses in International Economics No. 51, November 1997.

Genesis and Evolution of the Global Competition Policy Project

The Institute's project on Global Competition Policies was conceived in response to two concerns of Fred Bergsten's in the early 1990s. One was his concern that aspects of US antitrust might be undermining American global competitiveness.³ The second was his conviction that a "GATT for Investment" would be a natural institutional vehicle for delivering the enormous gains from trade in services and in corporate control. (Trade in corporate control would require, of course, *some* guidelines on merger. And trade in services would require *some* commitment to "investor national treatment." Together they would represent an approach to essentially free entry by foreign rivals on the same regulatory terms as home firms.) Fred had already commissioned me to work on a broader conception of his first concern,⁴ and he and Monty were at that time (early 1991) considering a GATT-for-Investment monograph.

It was thus natural for Fred to pull Monty and me together to design a project on Trade-Related Antitrust Measures—TRAMs, in similar spirit to TRIPs and TRIMs.

Although we were hardly "soul brothers" in either our research pursuits or personalities, we were good complements, our collaboration was effective, and we became good friends. (One of the side benefits of working—or playing—with Monty on anything is being exposed to his quirky encyclopedic knowledge of food, drink, language, tourist trivia, and mathematical inner and outer space.)

As the project developed, Monty's distinctive contributions became clear:

- adding flesh and blood to the dryly academic and technical content that I was providing (I had just started my Institute life and had spent the previous decade mastering the arcania of "strategic trade policy" perspectives under imperfect competition);
- conceiving the practical and promising ways that cross-border commitments on competition policies could be evaluated, sequenced, and institutionalized;
- savvy recognition from the start that thresholds, not harmonization, were the goal and only for certain anti-competitive practices—there was not even any *intellectual* consensus on vertical practices, price discrimination to enforce IP rights, and antitrust in "high-tech" sectors, however prominent they were in the early-1990s debates;
- lining up high-profile, reflective, articulate, foreign practitioners to contribute chapters on *country* experience in economies with most historical experience in competition policies, and similarly impressive experts in the frontier *issues* confronting competition policies around the world.⁵

³ C. Fred Bergsten, *America in the World Economy: A Strategy for the 1990s*, Washington: [Peterson] Institute for International Economics, 1988.

⁴ Culminating in my *Sizing Up U.S. Export Disincentives*, Washington: [Peterson] Institute for International Economics, 1993.

⁵ The Institute book had two parts, Country Studies and Issue Studies, with 7 and 8 chapters, respectively, sandwiched between integrative opening and closing chapters by Monty and me.

I learned enormously watching Monty do all this well. For example, I think it was Monty's brainstorm to create a summary table that visually distilled the economic clarity of more than 20 antitrust issues and then assessed both their state of current cross-border convergence and their potential for more convergence in the future. I think it was also his idea to propose a very gradualist and experimental three-phase sequencing of any agreement, moving only very slowly from "cooperative unilateralism" over best practices, featuring regular consultation (but no dispute settlement) and comity arrangements; to a second phase of less controversial TRAMs (concerning hard-core cartels, merger-and-acquisition guidelines, and national treatment for foreign investors⁶), implemented plurilaterally among a subset of WTO members; to a third—only possible—phase with a wider coverage of both anticompetitive practices and WTO members.

I was also introduced to colleagues, especially law scholars and practitioners I would never have encountered otherwise. Among them were impressive scholar-practitioners—what may look like name-dropping is really a tribute to Monty's networking—such as:

- Frédéric Jenny, who has for 15 years since Monty cajoled him into cooperation, chaired important Competition-Policy Committees and Working Groups at the OECD and WTO and served as Vice-President and General Spokesman for the French Conseil de la Concurrence;
- Robert Pitofsky, who, after contributing a chapter to our efforts, served more than 6 years as Chairman of the Federal Trade Commission, joint overseer (with the Justice Department's Antitrust Division) of US competition policy;
- the indefatigable and ubiquitous Eleanor M. Fox, who contributed one chapter on her own to our project, coauthored a second, and became one of 10 board members of the catalytic ICPAC (Ice-Pack) committee described below;
- to say only a little about prominent Japanese scholar-activists such as Mitsuo Matsushita and Kotaro Suzumura, American luminaries like Raymond Vernon, and younger, up-and-coming influencers such as Kalypso Nicolaidis, now at Oxford and director of an important European Union Study Center, and Mark A. A. Warner (currently Conservative Party candidate for an open seat in the Canadian Parliament and one of Monty's closest young mentees).

In addition to the normal Institute study groups and release meetings, we arranged two "pre-conferences," one in Paris, one in Tokyo—Monty's choices, of course—in which our team of authors aired and critiqued early drafts under Monty's and my moderating, and schmoozed with each other and us (Monty was a master).

And though I have no firm proof of this, it seems to me very likely that the influence of these thoughtful, high-profile movers and shakers helped bring about a sea of change in American willingness to contemplate a cross-border beginning to competition-policy protocols.

⁶ National treatment for foreign investors has become considerably more controversial in the past 15 years, in the United States and Europe, and also in emerging economies like China, which is just beginning to implement comprehensive competition policies that could easily foment national industrial policies and favor national champions.

Denouement⁷

Throughout the life of Monty's and my project, the official American antitrust establishment (with just a few off-the-record exceptions) was chary, if not opposed to our ideas. We were baffled by this. To us, cross-border competition-policy agreements seemed like a natural and important policy frontier. The closest we could get to an explanation was miscegenation. Monty never articulated it so briefly, but in his earthy cynicism, he suspected that proud and pure American trustbusters had only virginity to lose from courting foreign counterparts, to say nothing of messing around with the completely corrupt trade bar.

We were not the only ones astonished when, toward the end of his tenure as Assistant Attorney General for Antitrust, Joel Klein created—out of the blue, it seemed, and contemporaneous with the emergence of our Institute publications—an International Competition Policy Advisory Committee, chaired by James Rill from the antitrust establishment and Paula Stern from the trade-policy establishment.⁸ Ice-Pack (ICPAC), as it came to be called, held two years of hearings and issued a thoughtfully comprehensive Final Report.⁹

ICPAC's principal recommendation seemed modest at the time. It was “merely” to initiate a free-standing “dialogue” of government officials, firms, and NGOs to “consult on matters of competition law and policy” (p. 282). It was to have no link to the WTO, to the OECD, or to any official institution—it even compared its model favorably to the G-7!¹⁰

But out of ICPAC came a group far more effective than the G-7, though far less photographed, the International Competition Network, with

- a 45-page membership list from 81 countries,
- annual meetings and continuous interchange during the year “to build consensus and convergence toward sound competition policy principles across the global antitrust community,”
- and recurrent workshops and working groups on such matters as cartels, mergers, and implementation guidelines (two out of three of our second-phase TRAMs).

Monty was proud of his progeny.¹¹

And also in the wake of Monty's and my Institute project, ICPAC's follow-on, and the mushrooming work of ICN has come serious scholarly policy evaluation and management of cross-border competition policy

⁷ Monty frequently flashed his facile French.

⁸ Rill was a predecessor to Klein, and Stern was a former Chairwoman of the US International Trade Commission. ICPAC's Executive Director was Merit E. Janow.

⁹ The Final Report and related documents can still be found at <http://www.usdoj.gov/atr/icpac/icpac.htm>.

¹⁰ Eleanor Fox, one of our authors, was the only member of the ICPAC Board to favor nesting a competition-policy agreement in the WTO, as opposed to creating an ad hoc, free-standing group like the ICN came to be. Monty's policy design in our writings always favored the latter as the first phase in an intentional graduation toward the former as a second stage, yes, “housed” at/in the WTO consistent with its fundamental ethic of openness.

¹¹ Though he was also irritated from time to time at how little credit he received! From conversations over the years, I know he subscribed to the basic thrust of my remarks in this tribute.

issues—as opposed to Monty’s and my entrepreneurship. Simon Evenett, here today in Monty’s honor, has been one of the most prolific and dedicated of those who grasped the baton and continued the course.

And to those who think “the course” ended at the global level with Doha-Round sidetracking of competition-policy commitments (among the other “Singapore Issues”), I have strong words of caution. Out of sight is not out of momentum. More and more countries are drafting competition-policy laws and implementing them, China most prominently. Their cross-border implications will soon be making news, and not always good news. Regional-integration conventions on competition policies are surfacing beyond the European Union, as Simon Evenett has recently outlined in several papers. And at the WTO, sidetracking is not erasure. The WTO continues to monitor competition-policy developments and maintains a residual mandate to provide educational workshops on the topic for developing countries that request them (two took place in 2006, in Cameroon and Zambia). Well it should have such a mandate, in Monty’s and my opinion—nondiscrimination and contestability are closely related principles; rumors of death at the WTO have been greatly exaggerated.

Summary Postscript

If my assessment above is persuasive, then Monty’s insights into cross-border competition policies were at least prescient and arguably prophetic. They, along with his catalytic networking, birthed a lively global experiment whose success continues, though without fanfare, and whose future progeny may yet include much of the TRAMs mechanism that Monty and I envisioned. These ideas bore fruit, even if Monty’s paternity has been somewhat forgotten.

We were unnatural friends, as well as colleagues. He would not be surprised to hear me quoting a Jewish sage from nearly 2200 years ago, Jesus ben Sirach, in his memory:

“A good life lasts only so long, but a good reputation will last forever.” (41:3, TEV).

Thanks, Monty.