
THE IMPACT OF FOREIGN DIRECT INVESTMENT (FDI) REGULATIONS ON COMPETITION LAW: A COMPARATIVE ANALYSIS

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ABSTRACT

The rules and policies for foreign direct investment will configure the competitive forces within host countries quite significantly. This research study examines the role of foreign direct investment regulations in the competition across dissimilar contexts between category of regulatory environment conditions and economic nature. FDI is an important source of economic development since it brings about technology diffusion, improvement in industrial efficiency, and innovation. But then its contribution to competition lies in the complex relationship among the quality of the institutions, regulations of institutional bodies, and the openness of the market.

The research, examines how prohibitive policies discourage the flow of FDI raising transaction costs and lowering market access, while open policies tend to attract multinational enterprises (MNEs) with competitive pressures on local businesses. Comparative research points out that nations with effective legal systems, property rights protection, and transparent governance regimes attract greater inflows of FDI that can initiate competition and innovation. On the contrary, Red-Tape and corruption act as disincentives for foreigners and hence they compete stifle economic dynamism competition itself.

The study would also see the dual effect of FDI on local markets, as it drives out inefficient domestic firms as competition increases and, at the same time, it raises industrial efficiency through spillovers of knowledge and technology. The interaction between FDI and local innovation gives contradictory results- sometimes leading to lower incentives to innovate due to monopolistic pressures while, at other times, resulting in higher R&D investments due to competitive pressure.

This paper adds to the extant literature by pointing out key regulatory drivers that shape the nature and the magnitude of competitive effects induced by FDI, and recommend policy optimization of such effects. The results highlight responsive regulatory regimes which balance domestic industry

protection and foreign investment promotion. Keywords: Foreign Direct Investment (FDI), competition, institutional quality, regulatory frameworks, innovation, multinational enterprises (MNEs), economic growth.

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INTRODUCTION

With foreign direct investments becoming an important object of global economic integration, it has contributed immensely to economic growth, technological advancements, and industrial development. The 2 decades have seen a huge expansion in FDI, the share of which in world GDP rose from 22% in 2000 to almost 35% in 2016. This clearly shows how important FDI has become to link economies, transferring technology, and creating competition. Multinational enterprises (MNEs), through FDI, have established complex cross-border production networks that enhance productivity and innovation in host countries¹.

However, FDI regulations are vital in determining how much of these benefits can actually accrue. Such regulations include policies on entry into the local market, matters of foreign ownership, and the practicalities of doing business laid down for foreign investors. Liberalized regimes for FDI attract foreign capital and engender competition, while restrictive regimes are deterrent to investments that can bring about economic dynamic growth. The balance between protecting domestic industries and fostering foreign competition remains a key challenge for policymakers.²

The study concerns the principal question: What is the effect of FDI regulation on competition between countries? This question attains special timeliness, as governments around the globe have adopted different regulatory measures to reconcile the national interest with the claims of globalization. While certain nations use FDI as a tool for competitiveness and innovation, other nations impose heavy controls in the wider interest of protecting local industries, often to the detriment of economic efficiency. The aims of this research are fourfold:

¹ Federico Carril-Caccia and Elena Pavlova, Foreign direct investment and its drivers: a global and EU perspective, https://www.ecb.europa.eu/press/economic-bulletin/articles/2018/html/ecb.ebart201804_01.en.html (last accessed on 5.04.2025)

² Adam Hayes, Foreign Direct Investment (FDI): What It Is, Types, and Examples, <https://www.investopedia.com/terms/f/fdi.asp> (last accessed on 5.04.2025)

1. To analyze the mechanisms by which FDI inflows are affected by different regulatory frameworks.
2. To examine the relationship between FDI and domestic market competition.
3. To analyze how FDI regulations interact with technology and innovation.
4. To formulate policy implications from the findings that enhance competition-related benefits from FDI.

This study will attempt, by making a comparison across various kinds of economies, to unravel the complex relations between FDI regulations and competition, thus providing useful insights for policymakers to formulate workable strategies that maximize economical gains without compromising national interest.

OVERVIEW OF FDI REGULATIONS

Foreign direct investment (FDI) regulations are the core legal and policy framework that government structures use to administer and regulate foreign investments inside the territory. These regulations seek to achieve a balance between facilitating foreign capital while protecting national interests and creating a fair playing ground. FDI regulations affect investor behaviour, markets and competition side of host economies.

TYPES OF FDI REGULATIONS

1. SECTORAL RESTRICTED

Many countries made policies that limit the areas where foreign investments would be allocated. The sensitive or strategic sectors include defense, telecommunications, energy, and natural resources. For instance, in the US, foreign ownership in sectors such as oil, gas, and transportation is limited for purposes of protecting certain infrastructures. Similarly, India places restrictions on FDI in real estate and gambling ventures.

2. OWNERSHIP LIMITATIONS

An ownership limit involves restriction on the percentage of equity share that may be owned by foreign investors in domestic companies. Such restrictions are justified in the sense that they

prevent foreigners from having excessive control over a domestic industry while encouraging the taking of joint ventures with local firms.

3. NATIONAL SECURITY REVIEWS

National security reviews are carried out in various countries as assessments of the risks foreign investment poses to crucial industries. Just like the previous measures, these can't escape from global development, as geopolitical tensions escalate, coupled with worries on cybersecurity. For instance, transactions involving sensitive technologies or sectors may require government approval.³

4. PERFORMANCE REQUIREMENTS

Performance requirements include conditions such as technology transfer obligations, local employment quotas, and export targets that investors must meet to operate in a host country. These measures aim to maximize the economic benefits of FDI for domestic stakeholders.

INTERNATIONAL INFLUENCES ON FDI REGULATIONS

While major global institutions, such as World Trade Organization (WTO) and bilateral investment treaties, affect FDI policy, they are often incorporated into the legislative texts of countries. The promotion of international harmonization is the objective that such treaties wish to achieve. However, they also permit the nations enough freedom to make domestic regulations according to their priority.

INFLUENCING INVESTOR BEHAVIOUR AND MARKET COMPETITION

The outcome of these FDI regulations is that they significantly influence investors on the kind of risk assessments, market entry strategies, and transaction costs that they have to undertake. Restrictive policies can deter foreign investors for extra compliance or reduced profitability, while more liberal regimes tend to attract FDI by providing greater market access and operations flexibility. It is also these regulations that tend to give shape to the competition: tight rules prevent local firms from foreign dominance but inhibit innovation and limit the

³ CT Corporation staff, What legal teams need to know about expanding FDI screening regulations around the world, <https://www.wolterskluwer.com/en/expert-insights/what-legal-teams-need-to-know-about-expanding-fdi-screening-regulations-around-the-world> (last accessed on 6.04.2025)

access to global know-how. Most often, freer policies tend to enhance competition since they bring about new technology through multinational enterprises and efficient practices. The conclusion drawn from the above statements, therefore, is that FDI regulations can manage foreign investments but established carefully so striking a perfect balance between a nation's interests and how competitive an economy can become.

COMPARATIVE CASE STUDIES

UNITED STATES

The United States employs a robust regulatory framework for Foreign Direct Investment (FDI), primarily overseen by the **Committee on Foreign Investment in the United States (CFIUS)**. Established in 1975, CFIUS is an interagency body tasked with reviewing foreign investments to assess their implications for national security. Its authority was significantly expanded under the **Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018**, which broadened its jurisdiction to include non-controlling investments and real estate transactions involving sensitive sectors such as critical technologies, infrastructure, and personal data.⁴

KEY FEATURES OF FDI REGULATION:

- CFIUS reviews mergers, acquisitions, or takeovers that might grant foreign entities control over U.S. businesses.
- Transactions involving critical technologies (e.g., AI, semiconductors), infrastructure (e.g., telecommunications, energy), and defense are closely scrutinized.
- The committee can recommend blocking or unwinding deals deemed threats to national security.⁵

FOCUS AREAS:

- **Technology:** Investments in cutting-edge technologies are heavily regulated to prevent

⁴ The Committee on Foreign Investment in the United States (CFIUS), [https://www.trade.gov/sites/default/files/2021-05/Chapter%207%20-%20The%20Committee%20on%20Foreign%20Investment%20in%20the%20United%20States%20\(CFIUS\).pdf](https://www.trade.gov/sites/default/files/2021-05/Chapter%207%20-%20The%20Committee%20on%20Foreign%20Investment%20in%20the%20United%20States%20(CFIUS).pdf) (last accessed on 6.04.2025)

⁵ Committee on Foreign Investment in the United States (CFIUS), <https://www.investopedia.com/terms/c/committee-foreign-investment-united-states-cfius.asp> (last accessed on 06.04.2025)

intellectual property theft and maintain competitive advantage.

- **Infrastructure:** Foreign control over public utilities or transportation infrastructure is restricted to safeguard national interests.
- **Defense:** Defense-related industries are protected from foreign influence to ensure military readiness and security.

IMPACT ON DOMESTIC COMPETITION AND MARKET ENTRY:

CFIUS guarantees national security, however its exacting reviews may discourage foreign investors due to uncertainty and exorbitant compliance expenses. In this way, entry into the market gets restricted to foreign firms while simultaneously safeguarding domestic industries from possible monopolization or technological leakage. However, with liberal policies in nonsensitive sectors, entry points for competition and innovation can be introduced through attracting more foreign expertise.

EUROPEAN UNION

This includes an effort exerted at the European Union level and by legislation of all the member states. The screening framework that was established by the EU in 2019 aimed to coordinate member state assessments of FDI risks related to security and public order. Nevertheless, several other countries might still be exercising autonomy over their investments, resulting in variability across the EU.

KEY FEATURES OF FDI REGULATION:

- The EU screening framework facilitates information sharing among member states about potentially risky investments.
- National governments implement their own FDI policies tailored to domestic priorities.⁶

⁶ Edward S. Rivera, FDI Restrictions Limitations on Foreign Investment into the United States, <https://www.trade.gov/sites/default/files/2021-05/Chapter%206%20-%20FDI%20Restrictions.pdf> (last accessed on 06.04.2025)

BALANCE BETWEEN INVESTMENT OPENNESS AND SECURITY:

The European Union maintains itself open for foreign investments besides all security concerns. North and East Europe has also tightened controls on acquisitions in sensitive sectors such as defense and technology, while smaller economies like Ireland remain relatively open for even more.

INTERACTION BETWEEN COMPETITION POLICY AND CONTROL OF FDI:

EU competition policy largely prevents the crowding out of the markets by foreign state-owned enterprises or monopolistic practices. The same applies to foreign investments, imposition of which will not in the future bring down market access competition across sectors as a result of undue influences or subsidies.

IMPACT ON MARKET DYNAMICS:

This is basically the EU's stance on foreign capital attraction while keeping strategic interests in mind. Although larger economies have stricter regulations that may push some investors away, these will, in turn, be good for domestic competitiveness because they safeguard key industries from foreign domination.

INDIA

The FDI policy in the country has undergone radical changes; from the post-independence era of protectionism to the post-economic reforms of 1991 liberalism. Today India pursues a dual policy enunciating sectoral liberalization but imposing restrictions to safeguard strategic interests.

EVOLUTION OF FDI POLICY:

As for the evolving FDI policy, initially, India had restricted foreign investment in order to protect indigenous industry, but with the open-door policy propounded under economic reforms, it began liberalizing with foreign direct investments. Policies now allow 100% FDI in several sectors under the automatic route but require government clearance for sensitive industries like defense and telecommunications.

STRATEGIC SECTORS AND DOMESTIC MARKET EFFECTS:

- **Defense:** 74% foreign investment through the automatic route is permitted by the government in defense manufacturing and beyond that, approval is required.
- **Telecommunications:** For some telecom services, foreign ownership is limited to 49% on security concerns.

The focus of liberalization is to allow foreign investments, but rules intend to severely restrain the power of these multinationals over their domestic competitors in strategic sectors.

CHALLENGES IN REGULATORY TRANSPARENCY AND INVESTOR CONFIDENCE:

India's regulatory environment is often criticized for lack of transparency and bureaucratic hurdles that deter investor confidence. Complex approval processes and inconsistent enforcement create uncertainty for foreign firms, impacting their willingness to invest.

IMPACT ON DOMESTIC COMPETITION:

FDIs have instilled competition in sectors like retail and manufacturing through the introduction of international standards and practices. Restrictive policies pertaining to strategic industries, however, inhibit competitive pressures and in turn, protect local firms. All these comparative cases inform on how some states regulate foreign direct investments differently from the other, typically: in the USA, the European Union, and India. USA national priorities, such as security concerns; balanced openness within the EU; and strategic protectionism within India provide the basis for alignment of policies in each country. Such nations, however, do have varied impacts that these policies create on the level of competition. Such understanding now enables effective consideration of such dynamics for optimizing the regulatory framework towards people's economic growth without neglecting national interests.

CROSS CASE ANALYSIS BETWEEN UNITED STATES, EUROPEAN UNION AND INDIA

The comparative analysis of FDI regulations in the USA, EU, and India reveals their differences in approach and application dependent upon diverging economic priorities, security

concerns, and institutional framework. All three do seek to achieve a proper balance between safeguarding national interests and ushering in the benefits of foreign investment; regulation style and intensity further act into the actual dynamics of competition and market behavior.

COMPARISON OF REGULATORY APPROACHES

1. UNITED STATES:

The U.S. employs a highly stringent FDI regulatory framework, primarily through the Committee on Foreign Investment in the United States (CFIUS). Its focus on national security—especially in critical sectors like technology, infrastructure, and defense—ensures protection from foreign dominance but can deter investments due to high compliance costs and legal uncertainty.⁷

2. EUROPEAN UNION:

The European Union thus strikes a fair balance with its screening framework by allowing foreign investments while providing safeguards for public order and national security. For example, while Germany and France impose stricter rules, smaller economies such as Ireland offer less stringent controls based on the autonomy of each member state in establishing its own specific rules.

3. INDIA:

India's regulatory framework reflects a mix of liberalization and protectionism. While it has opened many sectors to 100% FDI under the automatic route, strategic industries like defense and telecommunications remain tightly regulated. Bureaucratic hurdles and inconsistent enforcement often create challenges for investors.⁸

REGULATORY INTENSITY AND COMPETITIVE BEHAVIOUR

The level of Foreign Direct Investment (FDI) regulation influences the competitive behaviour

⁷ Competition Policy and FDI: A Solution in Search of a Problem?, <https://www.piie.com/publications/working-papers/competition-policy-and-fdi-solution-search-problem> (last accessed on 07.04.2025)

⁸ Development Centre Studies Policy Competition for Foreign Direct Investment A Study of Competition among Governments to Attract FDI, https://www.oecd.org/content/dam/oecd/en/publications/reports/2000/03/policy-competition-for-foreign-direct-investment_g1gh1387/9789264181083-en.pdf (last accessed on 07.04.2025)

in host economies:

- **Strict Regulations:** Countries like the U.S. have inbuilt more national security checks which restrict foreign move that can be dangerous to domestic private entities. But even take the example of a national security protective regulation; an existing law will reduce dynamism from their market. They would also be much less innovative through borrowing from global skills.
- **Liberal Policies:** Emerging or developed economies may attract investments in competition and technology advances within their open investment regime. An example is the smaller EU countries or liberalized sectors in India, due to their high levels of openness with the possibility that mega corporations will dominate the market and numerous ones squeeze out local ones from it.

RISKS OF OVER-REGULATION VS. UNDER-REGULATION

- **Heavy-handed Regulation:**

Too many regulations breed innovation-stifling barriers against capital inflow and capital flight as investors transfer to environments that are more amenable to investment. For instance, the convoluted approval process in India has driven investors away from the industry. Also, too strong reviews in the US would also undermine investments in emerging technologies which are critical for the economic development of the country.

- **Under-Regulation:**

Insufficient regulation leaves wide-open paths for foreign companies to capture markets in the country, destroy local industries, and create strategic vulnerabilities. For example, unrestricted entry into critical sectors like telecommunications can put either national security or data privacy at risk.

TRADE-OFFS BETWEEN NATIONAL INTEREST AND MARKET EFFICIENCY

Balancing national interests with market efficiency is a central challenge:

- **National interest:** To most countries, it considers the interests of safeguarding strategic industries that keep the national sovereignty safe and critical infrastructures like defense in the

U. S, telecommunications in India, etc.

- **Market Efficiency:** An open policy increases competition since such attracts multiple investors with advanced technology or efficient practices, thus creating monopolistic tendencies if not carefully monitored.

The cross-case comparison indicated that the adaptive regulatory frameworks must provide for a balanced approach between openness and protectionism. Protective frameworks, while essential in national interest protection, inhibit innovations, discouraging investment. On the other hand, liberal policies encourage competition but expose economies to strategic vulnerabilities. Policymakers must find an appropriate middle ground to ensure maximization of the benefits posed by FDI while minimizing its risks through governance and targeted oversight mechanisms.

POLICY IMPLICATIONS AND RECOMMENDATIONS

The comparative analysis of FDI regulations across the United States, European Union, and India provides valuable policy lessons for crafting effective rules that promote fair competition while safeguarding national interests. These insights highlight the importance of balancing openness with strategic protectionism, ensuring regulatory transparency, and adopting risk-based screening mechanisms.

POLICY LESSONS

1. Balancing Openness and Protection:

Countries like the United States emphasize stringent reviews for national security concerns, while the European Union adopts a balanced approach through its screening framework. India's liberalization efforts in non-strategic sectors demonstrate the potential for attracting foreign capital without compromising domestic interests. Policymakers must tailor regulations to sector-specific priorities, ensuring that critical industries are protected while non-sensitive sectors remain open to competition.

2. Impact of Regulatory Intensity:

Over-regulation can deter foreign investment by increasing compliance costs and

creating uncertainty, as seen in India's bureaucratic hurdles. Conversely, under-regulation risks market dominance by foreign entities, undermining domestic firms and exposing strategic vulnerabilities. A calibrated approach is essential to mitigate these risks.

RECOMMENDATIONS FOR EFFECTIVE FDI RULES

1. Transparent and Predictable Frameworks:

Transparency in approval processes and clear guidelines reduce investor uncertainty and foster confidence. Streamlining bureaucratic procedures, as recommended for India, can enhance regulatory efficiency and attract higher FDI inflows.

2. Risk-Based Screening Mechanisms:

Adopting targeted screening processes focused on high-risk sectors (e.g., defense, technology) ensures that regulatory efforts are concentrated where they are most needed. The United States' CFIUS model offers a useful template for identifying transactions with potential security risks.

3. Accountability in Enforcement:

Robust enforcement mechanisms prevent anticompetitive practices by incumbent firms that may deter foreign entrants. For example, the EU's integration of competition policy with FDI control ensures fair market dynamics.

4. Promoting Innovation:

Regulations should incentivize knowledge transfer and R&D investments from foreign firms, leveraging FDI to boost domestic innovation capacity. Protecting property rights and improving absorptive capacity can amplify these benefits.

Effective FDI policies require a delicate balance between safeguarding national interests and fostering market efficiency. Transparent governance, risk-based screening, and accountability in enforcement are critical to achieving this equilibrium. Policymakers must craft adaptive frameworks that attract foreign capital while promoting fair competition and innovation within host economies.

SUGGESTIONS

There is a significant impact on market competition per Foreign Direct Investment. Its result has largely depended on how well and how effective a program is enforced, as well as the emergence of sector-specific nuances. The following will then be recommendations and research directions leading to comparative analysis of these:

1. Comparative Framework Development

Multi-jurisdiction comparison analysis should adopt countries with varying regulatory arrangements such as merger control framework in India, conditional merger approvals in South Africa, and rules-based competition of the OECD.

Incorporating the metrics on the regulatory risk (like transparency, legal predictability, dispute resolution mechanisms) from the World Bank regulatory risk index so as to assess the meaning of FDI.

"Contrasting an 'incentives-based' and 'rules-based' type of regime," with data derived from the OECD showing the superior performance of stable legal frameworks, compared to fiscal incentives, in an economy's ability to sustain competition.

2. Country Case Study Recommendations

Greenfield vs. FDI by Acquisition

Take spectrum acquisition in India where the company acquired Thums Up as opposed to greenfield projects in telecom sectors (e.g., barriers in mobile markets concerning Bangladesh).

Conditional Mergers:

South Africa's Nestle/Heinz merger with compulsory brand divestitures and Titan Industries case in India with exclusive dealership prohibitions are both indicative.

Sectoral Dynamics:

Contrast and compare network competition and consumer goods competition in terms of what has been achieved through FDI regulation on addressing natural monopolies versus fragmented

markets.

3. Research Policy Recommendations

Strengthen Merger Control Mechanisms:

Propose mandatory ex-post evaluation for merger (e.g., CCI in India) to measure market concentration in the long run.

Improve Regulatory Transparency:

Recommend public databases of FDI decisions and entries of anti-competitive conduct, modeled on World Bank regulatory risk indicators.

Cross-Agency Coordination:

In addition to proposing inter-agency task forces (competition authorities + investment boards) to align FDI approvals with competitive outcomes.

4. Methodological Suggestions

Econometric Modeling:

By introducing panel data regression (as in Mueller's study) to correlate competition policy effectiveness with FDI inflows, measured through WEF's anti-monopoly scores.

Qualitative Surveys:

Identify regulatory pain areas (for example, historical distribution barriers in Japan), by interviewing companies which are heavily dependent on FDI.

Legal Text Analysis:

Employ NLP tools to contrast competition provisions, contained in bilateral investment treaties between various countries.

5. Less Explored Research Areas

Digital Markets:

How far do FDI regulations address the issue of data monopolies or platform concentration (e.g., cross-border e-commerce mergers)?

Sustainability Linkages:

Study whether competition policies for FDI could spur adoption of green technologies (e.g., OECD environmental standards).

Judicial Efficacy:

Look into the effect of such long delays in antitrust litigation (for example, at India's MRTP Commission) in deterring FDI or even creating incentives for anti-competitive practices.

So, this study would really go well on just about any empirical, legal, and econometric grounds, to help inform policies wisely. Combine so that it would involve FDI attraction but competitive market preservation. Gains made include insights from other developing countries such as India, South Africa and those of developed economies like OECD, all providing benchmarks helpful to regulators for action.

CONCLUSION

This research highlights the critical role of Foreign Direct Investment (FDI) regulations in shaping competitive outcomes across different economies. Through a comparative analysis of the United States, European Union, and India, it is evident that regulatory frameworks significantly influence market dynamics, investor behaviour, and domestic economic performance. While the U.S. emphasizes stringent national security reviews to protect critical sectors, the EU balances openness with strategic safeguards, and India adopts a hybrid approach of liberalization and protectionism.

The findings underscore that the intensity and design of FDI regulations can either foster or hinder competition. Over-regulation risks deterring foreign investment, stifling innovation, and causing capital flight, as seen in India's bureaucratic hurdles. Conversely, under-regulation may lead to market dominance by multinational enterprises (MNEs), undermining domestic industries and exposing strategic vulnerabilities. The balance between these extremes is crucial for maximizing FDI's benefits while minimizing its risks.

To strike the right regulatory balance, nations must adopt transparent and predictable policies that provide clarity to investors while safeguarding national interests. Risk-based screening mechanisms can ensure that regulatory efforts focus on high-priority sectors without imposing unnecessary barriers. Additionally, fostering accountability in enforcement and promoting knowledge transfer through FDI can enhance both competitiveness and innovation.

Ultimately, adaptive regulatory frameworks that align with a country's strategic priorities and economic goals are essential for leveraging FDI as a tool for sustainable growth and equitable market competition.

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