

## ANTITRUST AS AGENT FOR CHANGE

Conference “Antitrust, Regulation and the Next World Order”<sup>1</sup>

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Thank you, Cristina, for the invitation.

And congratulations on the amazing event.

Bearing in mind the panel’s topic, we need to ask ourselves two questions:

Looking at the past: **has antitrust been an agent for change?**

And looking ahead: **what should be in our plate for the next 5 years?**

In the EU, competition law was initially designed for coal and steel cartels.

Still, its plasticity allowed competition law to adapt itself to economic changes overtime and to **stand as a guardian against** some preconceived ideas of **“European champions” or “protectionist measures”**.

In the recent years, the world came to face new challenges.

Climate change; supply chain disruptions; rising costs; inequality; wars and growing geopolitical tensions.

While the interplay between competition policy and other public policies is not new, the **pace at which this inter-policy dialogue is called for is unprecedented**.

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<sup>1</sup> [https://www.bruconference2024.com/event/f79d717d-15c4-485a-a60b-4c718e9490b0/summary?trk=public\\_post-text](https://www.bruconference2024.com/event/f79d717d-15c4-485a-a60b-4c718e9490b0/summary?trk=public_post-text)

This brings both opportunities and challenges, which will **certainly mark the agenda of the next Commission.**

Let me start with the **opportunities.**

### ***1. Inter-policy dialogue - opportunities***

As innovation unfolds, new markets emerge prompting new public policies and regulations.

Take the digital economy, for example, which results from innovation. After, it called **for new policies to further develop**, such as data protection, in parallel to competition policy.

This is a mere example that, when it comes to the interplay between competition policy and other public policies, we cannot say there is a chicken and egg situation but, rather, a **virtuous circle.**

I will argue that competition - and **competition authorities can act as nudges for public policies.**

Truly, as an agent for change.

#### *Nudging for public policy: sustainability*

One clear example where there is **scope for competition nudging is sustainability.**

Here, **competition enforcers need to be vocal** explaining how **competition is key for achieving success in the green transition.**

It further entails **ensuring competition in newer markets for green products** and creating conditions to increase demand for such products.

Think of **electric mobility.**

Demand-side incentives, such as subsidies and tax rebates, have been tools to boost the adoption of electric vehicles.

But that is not enough.

We need a **dense and competitive network to recharge** those vehicles, as the AdC advocated in a draft report published a fortnight ago.

### *Labour markets*

Competition policy is also key in **nudging the behaviour of firms, in ways that are aligned with other public policy goals.**

An example are labour markets, where competition contributes to avoid unfair restrictions on worker mobility and unlawful wage-fixing.

This is an area where many competition agencies have been active **through advocacy** – the CMA and the Portuguese Competition Authority are examples.

But also through enforcement, in different jurisdictions.

In France, an investigation was launched recently, regarding no-poach. In Portugal, we have issued yet another sanctioning decision at the end of 2023. **Vigorous enforcement** is thus a powerful nudging tool.

So, I believe **labour markets will be in the agenda for the next years.** And this is very important, as **one further area which connects citizens to competition law – not only as consumers, but also as workers.**

### *Artificial Intelligence*

Another topic which will certainly be in agenda for the future are digital markets and Artificial Intelligence.

The rise of AI echoes many of the **challenges** the digital economy brings to competition.

Just recently the AdC published an issues paper highlighting **access to inputs** (cloud computing, foundation models, data) as key for how competition will unfold in Generative AI.

Digital markets are also an area where the **interplay between competition policy and other public policies** is very important.

And this is particularly relevant in terms of the agenda of the future Commission.

Let me explain.

On the one hand, in digital markets, we have witnessed the **break of the territorial link** that traditional markets had in the past.

In addition, the “digital market power” of the famous GAFAM have brought new challenges.

Some of them have threaten to leave certain countries in response to copyright laws, like Google and Facebook in Australia in 2021, or in Spain, where Google News left for eight years.

**Cooperation at the EU level**, within the ECN, will be essential to tackle the challenge posed by this bargaining power, so that we can effectively apply article 102 TFEU or article 22 EUMR, among other tools.

Furthermore, it will be in the hands of the next Commission to implement the **well-known package of regulations of the digital economy that goes from the GDPR, to the DMA, the DSA, the recent Data Act or the proposal of the AI Act.**

These are all complementary to competition law.

We thus need more than **never to foster the dialogue between competition policy and other policies.**

I do think that was the message of the Court of Luxembourg in the 2023 Meta case ruling (Case C-252/21) when referring to a duty of sincere cooperation with data protection authorities.

**All of this means that we are now on the verge of a new dimension of competition law, a truly competition law 2.0.**

## **2. Challenges**

Let me now move on to the challenges. The next Commission will take office in a complex **geopolitical scenario**.

### *Industrial Policy and Geopolitics*

When it comes to protectionism, up until now, **the EU has resisted the temptation of a damaging “tit for tat” response.**

This balanced approach continues to guide policy choices at the EU level, with tools built around long-standing principles of a level playing field.

I have in mind the new EU Foreign Subsidies Regulation or the European Chips Act.

The FSR is a hybrid tool, mixing insights and principles from trade and competition, and is **an example of how it is possible to find the common threads between different policy objectives.**

Furthermore, the emergence of China as an economic super-state led to the discussion on the EU's open strategic autonomy, by zooming in on the Critical Raw Materials Act, and to create tools that opened space for reciprocity with third states.

These are examples that the EU is no longer the “white angel” in world trade as it might have been perceived some years ago.

As Vice-President Vestager put it, *“Europe must be a player, not a playground”*<sup>2</sup>.

This renewed focus on industrial policy does not mean abandoning **well-founded competition principles**.

The firms receiving state aid, in the end, must be competitive and stand on their own in the market. **Competition is the engine of innovation**– which, in turn, is precisely what we need to address today’s societal challenges.

Here, **competition authorities should strive to find the compatibilities between competition and other public policies**, for example, assisting policymakers in devising competition friendly policies.

This while **keeping the core of our activity as enforcers clear**.

### **3. Concluding Remarks**

Now it’s time to conclude.

The emergence of what I call a **Competition 2.0 demands** the competition community to rethink its role and way of working.

The growing level of complexity of public policies puts the NCA’s under **pressure to pursue their missions without being detached from the wider context**.

It’s time to rise to the occasion in order to keep antitrust as an agent for change.

Thank you for your attention.

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<sup>2</sup> [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_24\\_411](https://ec.europa.eu/commission/presscorner/detail/en/speech_24_411)