

## Competition as an enhancer of fundamental values

### Congress on Economic Governance, Regulation and Administration of Justice

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Good afternoon. Buenas tardes.

It is a great pleasure to be here today and to contribute this Congress's discussions.

Congratulations, President Cani Fernández, for creating the opportunity for this important debate.

I will focus my remarks on how competition policy promotes fundamental values and how it addresses society's important goals.

#### *Competition and fundamental values*

First and foremost, it is important to state that competition policy matters because it benefits citizens.

In its essence, competition makes markets deliver welfare for citizens, allowing for more choice, lower prices and innovative goods and services.

Competition policy is also about applying rules that ensure companies compete fairly with each other.

Alongside this economic dimension, which is well known to many of us here, competition policy also bears a significant **social dimension**.

Competition is a public good that contributes to a balanced and fair society. A society where market opportunities **are for everyone**.

Citizens are the prime beneficiaries of competition policy. They are indeed **empowered** by an effective competition policy.

This is so because when there is competition, they can spend less, or buy according to their willingness to pay; they can benefit from innovation that brings more convenience to their lives; they can open businesses more freely or change professional course more easily.

**Competition enhances people's potential** and gives them opportunities to materialize that potential.

Citizens hear about competition because of merger decisions, or a large fine or state aid. What they often do not realize is that competition policy has a wide-reaching impact in their daily lives. For instance, when they are shopping in supermarkets, or wiring money, or considering switching jobs.

So, competition benefits **the people**.

But I will argue more. Competition policy can support fundamental values, such as rule of law, democracy, and human rights.

As we are regularly reminded, there are values that we should not take for granted. **Rule of law**, in particular, is key to ensure a free, democratic and fair society. Pursuant to the concept of rule of law, the law must be applied **equally and fairly** to everyone, including citizens, firms, and governments, regardless of their status.

How can competition contribute to the strengthening of the rule of law?

The answer is,

(1) through a transparent, clear and predictable legal framework, which citizens and firms understand and comply with.

(2) through an effective and vigorous enforcement by competition authorities, supported by a clear economic and legal reasoning.

(3) and through an independent judicial review.

And, as we know, a well-established rule of law contributes to a thriving business environment, with a level playing field, which is instrumental to achieve fair and contestable markets.

As competition authorities, we strive to apply **only the highest standards** of rule of law. In doing so, we are true to our mission, and we may inspire other institutions. This in itself is a contribution to fundamental values that we should be proud of. In other words, it is a **positive externality** of competition policy.

### *Competition policy and societal challenges*

Let us turn now to current challenges in society.

Even if competition may not be the prime policy for addressing some of these challenges, competition can contribute to them, be it the economic recovery, or the green and digital transitions, or even labor markets. For all of these, society has set high ambitions.

Today, in addressing the effects of the pandemic, but also the effects of the invasion of Ukraine and inflation, countries have been deploying economic recovery strategies.

Taking competition policy into account in the **recovery agenda** is a fantastic opportunity to make the economic rebound more agile, inclusive and resilient.

At the AdC, we have contributed to this discussion by advocating<sup>1</sup> for three competition principles that we believe should be embedded in recovery strategies. We chose to highlight them because they can be structurally beneficial to consumers and businesses. And these principles are:

1. Ensuring competitive neutrality in public financial support to firms;
2. Removing, across sectors, unnecessary barriers to entry and expansion, so as to unleash the full potential for recovery and growth; and
3. Combatting bid-rigging and ensuring competitive and efficient public tenders, given the sizeable public spending and investment ahead.

If countries put competition at the core of their efforts for recovery, we may indeed obtain significant change **for the better and for the many**.

In other words, **we need more, not less competition**, to ensure that our economies come out of current circumstances better, stronger, and more resilient.

A second aspect that deserves authorities' attention is competition and labor markets.

In the current economic turmoil, **supporting inclusiveness and fair play** in labor markets is particularly important.

Enforcing competition in labor markets may offer more opportunities for workers, either those who are unemployed or those looking into new professional paths.

It can bring more opportunities for everyone.

This is why competition authorities address barriers to professional mobility and no-poach agreements between firms. These are a couple of examples where the interplay between competition and labor markets arises.

At the AdC, we have been witnessing strong support for our no-poach cases, and strong interest in our Report and Best Practices Guide on anticompetitive agreements<sup>2</sup> in the labor market. The report emphasizes that agreements between firms on no-poach and wage fixing can have negative effects on markets. This is the case, for example, through the decrease in mobility, in innovation and a negative impact in downstream markets. These agreements can thus be responsible for negative effects on both workers and consumers.

Competition also plays an important role in **digitization**.

Countries may have had a slow start in the 90s, but the fact is, digital technology has very much changed people's lives in the past two decades and has changed business models as well.

The pandemic has further accelerated this process.

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<sup>1</sup> These principles were stated in the AdC's *Report on the role of competition policy in implementing the economic recovery strategy* (June 2021): [https://www.concorrenca.pt/sites/default/files/documentos/comunicados/2021-AdC-contribution-on-economic-recovery\\_0\\_0.pdf](https://www.concorrenca.pt/sites/default/files/documentos/comunicados/2021-AdC-contribution-on-economic-recovery_0_0.pdf)

<sup>2</sup> AdC's Report and Best Practices Guide on anticompetitive agreements in labor markets (2021): [https://www.concorrenca.pt/sites/default/files/issues%20Paper\\_Labour%20Market%20Agreements%20and%20Competition%20Policy.pdf](https://www.concorrenca.pt/sites/default/files/issues%20Paper_Labour%20Market%20Agreements%20and%20Competition%20Policy.pdf)

It is only fair to acknowledge that all of us benefit from the many positive aspects of digitization. Many services have become more convenient for us. Many products are now within reach, with little delay.

The role that competition enforcers play in this context is one that ensures that the digital economy works in a fair and contestable way. In other words, to ensure that digital ecosystems work, again, for everyone.

We acknowledge that the digital economy has changed firms' incentives and how they compete, which in turn modified markets' dynamics. We also acknowledge that there is a variety of unique **features in digital platforms**: how firms twist markets in their favor; how consumers are prone to behavioral biases; how platforms levy and monetize their market power; how algorithms can be designed to nudge consumers into doing something, among others.

At the AdC, for instance, we published an Issues Paper<sup>3</sup> on Digital Ecosystems, Big Data and Algorithms, in 2019, in which we embraced the discussion of some of these issues.

Such behaviors raise mainly two concerns for enforcers: the risk of abuse of market power in large platforms, and the risk of collusion between firms which operate within the digital space.

At the European level, some initiatives, such as the **Digital Markets Act (DMA)**, are tackling these concerns. The DMA aims at preventing so-called gatekeepers from imposing unfair conditions on business users and end-users, and at ensuring the openness of important digital services. It ensures that large online platforms behave without conflict of interest.

The DMA's proposed obligations and prohibitions were built upon the case law practice and investigations pursued by DG Competition and national competition authorities (NCAs) over the years. Together with the Digital Services Act – another European Commission's initiative –, European citizens' main concerns of today can be significantly reduced.

We have discussed thus far the links between competition and economic recovery, labor markets and digitization.

Let us turn now to **sustainability** – and the role that competition policy can play to achieve this goal.

Green innovation is fundamental if we want to achieve carbon neutrality by 2050. The good news is that given the current consumer willingness to pay for “green”, competition and sustainability often go hand-in-hand. This is mostly so because competition policy preserves the incentives for firms to compete, and thus to innovate. Enforcers preserve these **incentives** by preventing incumbent entrenchment and by fostering contestability.

Competition is thus a strong **catalyzer** for the green transition.

Even so, there has been a wide discussion over the past two years whether competition policy should seek to achieve even more, within the scope of its activity. And indeed it has done more

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<sup>3</sup> AdC's Issues Paper on Digital Ecosystems, Big Data and Algorithms (2019): <https://www.concorrenzia.pt/sites/default/files/processos/epr/Digital%20Ecosystems%2C%20Big%20Data%20and%20Algorithms%20-%20Issues%20Paper.pdf>

through state aid that is contingent to decarbonizing. Or by being open to analyzing agreements which may be needed in order to achieve the Green Deal objectives.

### *Institutional design and powers of competition enforcers*

I just mentioned a few of society's main current goals to which competition enforcers can contribute.

Now, in order to contribute to these and other goals, competition enforcers must have both an **adequate institutional design** and **effective powers**. These are both key components of a successful competition policy.

Moreover, **equipping courts** with the necessary means is also key to ensure robust enforcement as a whole.

This is because an independent review, by the courts, of enforcement decisions taken by competition agencies is essential to ensure that the enforcement process and subsequent decisions are lawful and that the parties' rights are observed.

An effective judicial review strongly contributes to guarantee the rule of law and to ensure the consistency and credibility of competition enforcement.

In recent times, there have been initiatives that strengthen the institutional design of enforcers and the effectiveness of competition rules.

For instance, at the EU level, the **ECN+ Directive** strengthens competition enforcers' institutional design and powers. Complementary tools will shortly be in place, such as the Digital Markets Act.

These are positive developments. But because of the sizeable benefits of competition to society – and let us not forget that more competition brings more opportunities for all – we as citizens should continuously demand that both enforcers and courts have the means to be effective in pursuing their missions.

I hope this first contribution to the discussion was able to set the scene to what will certainly be an insightful discussion – one that I am very much looking forward to.

Thank you.