

Competition Policy:

Recent Trends and Considerations for Inequality and Sustainability

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COMPETITION POLICY AND INEQUALITY

Competition policy has at its heart the interests of the consumer. It is preoccupied with protecting consumers against producer practices such as cartels, abuses of dominant position, and unrestrained mergers that would mean higher prices and fewer choices. In terms of impacts on inequality, the benefits of market power tend to accrue disproportionately to the wealthy (shareholders) at the expense of the poor (consumers) (Baker and Salop, 2015; Gans *et al.*, 2019), exacerbating inequalities both within and between nations. Ennis *et al.* (2019) survey eight OECD countries and find that market power increases the incomes of the richest decile in those countries by between 12 and 21 percent, while reducing the incomes of the poorest 20 percent by at least 11 percent.

The growing interest in the international aspects of competition policy is a natural result of the increasing globalization of economic activity. The issue is hardly new; the 1948 Charter of the International Trade Organization contained provisions on trade-related horizontal business practices. In 1993, 10 percent of the US Department of Justice's anti-trust cases had international dimensions (Lloyd, 1998); by 2016 over 90 percent of fines secured by the Department in relation to cartels involved international arrangements (Pérez Motta, 2016). Similarly, the number of mergers and acquisitions with an international dimension has increased 250 – 350 percent since 1990 (Capobianco *et al.*, 2015). In a global economy, purely national competition policy would be woefully inadequate.

Evidencing the need for international cooperation, market concentration across a range of sectors and countries has increased significantly in recent decades. Diez *et al.* (2018) find that markups (an indicator of market power) of publicly traded firms increased significantly from 1980 to 2016, particularly in advanced economies where they rose by a GDP-weighted average of 39 percent. Loecker and Eeckhout (2018) in a survey of over 70,000 firms in 134 countries find, similarly, that the average global markup has surged from close to 10 percent in 1980 to 60 percent in 2016, with increases most prominent in North America and Europe. Sexton (2013) has extensively documented the lack of competition in global agricultural markets. Rosenberg (2006) recounts similar trends in the pharmaceuticals sector. In the retail sector, Amazon's share of the US e-commerce market as of 2018 was 49 percent, or fully 5 percent of total consumer spending (Lunden, 2018).

During that same time, the issues have evolved, leaving existing tools of competition policy less relevant. Four of the top 10 firms in the S&P top 500 as of September 2019 are multi-sided technology platforms: Amazon, Facebook, and Alphabet (Google) (held in two classes). A standard test of the relevant market to determine market power – a small but significant price increase to see whether consumers will switch to substitutes – doesn't work for a provider such as Facebook which provides services at no cost, with a value creation strategy based on the data it collects from users. Market power for these firms is in large part vested in their network effect: the more users, the more attractive they are to other users. There are obvious and important connections to the e-commerce issues discussed elsewhere in this workshop.



For the purposes of this paper we will use the phrase competition policy to cover both competition law (anti-trust law) and policies, regulations, and initiatives aimed at increasing competition. Competition was one of the “new” issues added to the Doha Round work programme by the 1996 Singapore Ministerial Declaration (para. 20), but it was ultimately dropped by the General Council in 2004, following the collapse of the 2003 Cancún Ministerial. Opposition came primarily, but not exclusively, from developing country members (Grollier and Somasundaram, 2017). Those without existing competition law feared they would be compelled to enact such law and establish resource-intensive institutions to enforce it, while some feared that their policy space to promote national champions (with monopoly power) would be curtailed by binding provisions on non-discrimination. Others, including the U.S., feared the prospect of their domestic competition authority decisions being challenged in a multilateral judicial setting.

The work stoppage on competition in the WTO has not stopped the issues from being taken up in RTAs since that time. Laprévote *et al.* (2015) find competition-related provisions in 216 RTAs. The EU actively uses RTAs – especially with developing countries – as vehicles to promote the observance of rule frameworks that mirror closely core EU treaty competition provisions (Doleys, 2012). The US has made it standard to include competition chapters in its RTAs since the North American Free Trade Agreement (NAFTA), with provisions that typically commit to cooperation on enforcement, including mutual legal assistance, notification, consultation, and exchange of information (Lehrer, 2017).

Laprévote *et al.* (2015) survey the RTAs notified to the WTO and find the most common types of provisions to cover (in order of prevalence): principles for settlement of competition-related disputes; cooperation and coordination mechanisms; obligations to regulate designated monopolies and state-owned enterprises; disciplines on state aid and subsidies; and obligations to adopt/maintain competition law. They find that the content, approach and stringency of these obligations vary considerably across agreements, and most agreements exclude competition-related provisions from their general dispute settlement mechanisms.

The key questions for discussion centre around governance. It is clear that rising global concentration of market power is an issue that significantly aggravates inequality within and between nations. It is clear that competition policy should address that issue, and that international efforts are essential. Where should those efforts take place? There is an abundance of work at present focused on international cooperation, sited in a clutch of international organizations: the International Competition Network; UNCTAD’s Intergovernmental Group of Experts on Competition Law and Policy, the OECD’s Competition Committee.

Does more need to be done? Should competition policy be sited in the multilateral trading system? Some have argued that there would be an institutional misfit – that the WTO efforts on competition would necessarily guard the interests of producers rather than consumers, trade law being different than competition law in its objectives and structure, and have advocated for a World Competition Forum (CUTS, 2000). Should a model FTA chapter be developed, as proposed by Laprévote *et al.* (2015)? Is there a need to collectively revisit the



basic tools and models in light of the evolution of business models in the information age (Beaton-Wells, 2019)? What role might trade and investment regimes play in helping competition policy play its full part in addressing the urgent questions of inequality within and between nations?

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