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**Neo Brandeis/Ordo-liberalism and Competition Law and Policy:
A Perspective of Developing Jurisdictions**

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Neo Brandeis/Ordo-liberalism and competition law and policy: A perspective of Developing jurisdictions

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Issues to discuss...

1. **Starting point:** issue of concentrated markets...Markets are not functioning in developing jurisdictions...
2. **The State (regulator):** a problem / A potential solution?
3. **Ordo-Liberalism/Neo-Brandeis** and conceptual approach of CL in DC: towards a more **“inclusive approach”** on the objectives of CL
4. **Impact on enforcement:** reconciling efficiency and inclusiveness through a pragmatic approach on enforcement

1. Starting point: issue of concentrated markets/Markets are not functioning

- ❖ History of market **regulation** and **State involvement in the economy**
- ❖ **Sub-Saharan Africa:** former colonies – need to build their political and administrative institutions after independences in the 1960's...
- ❖ Task also to **regulate markets, to build institutions and conduct economic reforms for development...**
- ❖ **Impacts on competitiveness of markets...**

1. Starting point: issue of concentrated markets/Markets are not functioning

❖ Consequences:

- Planned economies...
- Central place of SOEs...
- Limited private initiatives...
- Concentrated markets/non-functioning markets...
- Exclusions and lack of business opportunities for many...

2. The State (regulator): a problem / A potential solution

- ❖ **Economic and political power are intertwined...**
- ❖ Prominent role of **political influence** of States in markets: State sponsored anticompetitive practices
- ❖ **Political influence in enforcement** (national and regional level)
 - Example: Bollore case of the WAEMU Commission
- ❖ **The State as a potential solution:** could play a role in enforcement absence of functioning competition authorities

3. Ordo-Liberalism/Neo-Brandeis and conceptual approach of CL in DC: towards a more inclusive approach on the objectives of CL

- ❖ **Narrow approach of efficiency and consumer welfare...**
- ❖ Do not need to take account of the need to make markets open and more competitive
- ❖ Need to first make **markets competitive** and second to **protect the competitiveness of markets**
- ❖ **Specific issues:** dealing with economic concentration, protecting the competitiveness of the SMEs, providing economic opportunities for many, making markets inclusive, limiting the role of the State

3. Ordo-Liberalism/Neo-Brandeis and conceptual approach of CL in DC: towards a more inclusive approach on the objectives of CL

- ❖ Current trends in goals and enforcement in DC are in line with an Ordo-Liberalism and the Neo-Brandeis approach on competition law

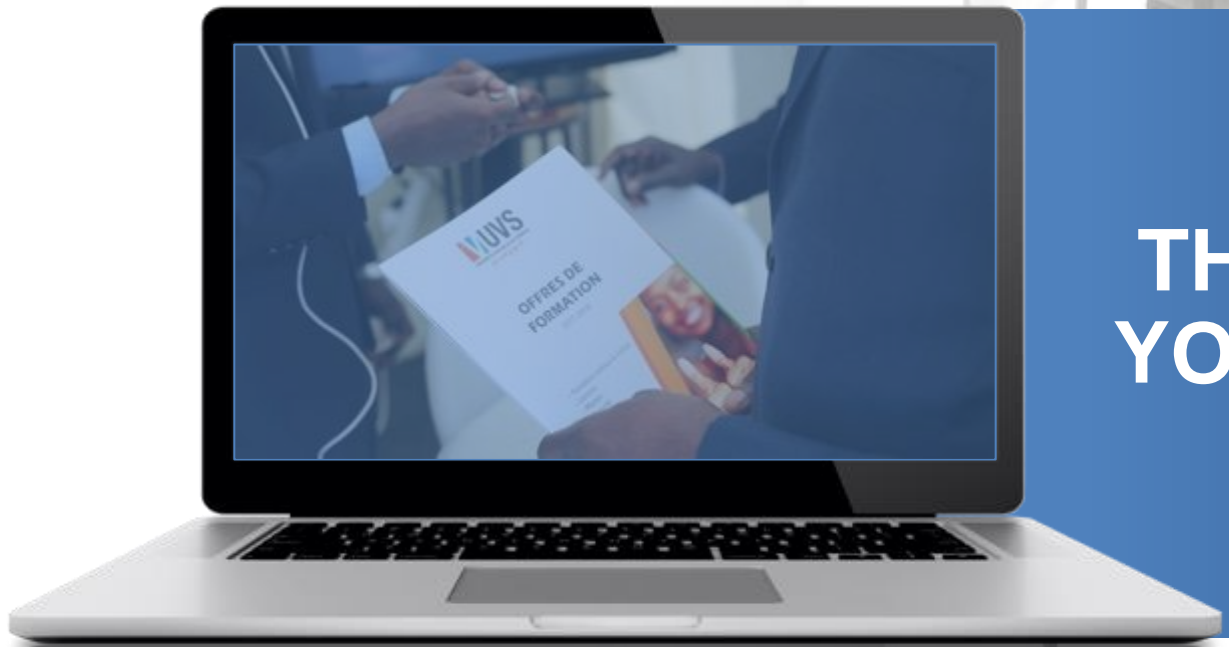
- ❖ Trends to go **beyond efficiency and consumer welfare** in defining goals of CL:
 - Public interest
 - Protecting the competitiveness of the powerless
 - Protecting the competitiveness of the markets (national/regional dimensions)
 - Safeguarding economic opportunities

4. Impact on enforcement: reconciling efficiency and inclusiveness through a pragmatic approach on enforcement

- ❖ Trends to take into account “inclusiveness oriented” objectives on enforcement
- ❖ Issue of reconciling efficiency/consumer welfare and non «economic-equity objectives»
- ❖ Regulation could be a tool if enforcement does not work efficiently...
- ❖ **Limits:** Importance of transparency, objectivity and legal safeguards for businesses...

PERSPECTIVES

- ❖ **Neo-Brandeis/Ordo-liberalism... are in line with the (trend) approach of competition law in developing jurisdictions**
- ❖ **New Brandeis/Ordo-liberalism more sympathetic to the issue of developing countries...**
- ❖ Towards a more pragmatic approach... between **enforcement** et **regulation...**



**THANK YOU FOR
YOUR ATTENTION**