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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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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-functionning 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: Bolloré 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...
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