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Broadening Competition Law Goals? A Developing Country's Perspective

**Session: New Brandeis Movement/Ordo-liberalism
and Competition Law and Policy**

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Current debate is ignoring high risks of broadening competition law goals in developing countries

- Over time, competition law enforcement has evolved towards greater certainty, considering as its main objective the protection of competitive process to enhance economic efficiency and consumer welfare
- Developing countries characterizes by lacking strong institutional framework
- Broadening the goals of competition law imply discretion and legal uncertainty
 - Injecting policy trade offs in antitrust cases and M&A reviews would be a source of political pressure and corruption
 - Discretion is prone to increasing power of traditional incumbents and “crony capitalism”
 - Lower investment rates and lack of innovation, much needed in developing countries

No conflict between competition and the pursue of goals that all of us would be happy to achieve

- There is not a binary choice between the defense of competition, efficient functioning of markets and consumer welfare, on the one hand, and a more democratic social structure, environmental protection, poverty reduction, gender equality or employment, on the other
- Trade offs are intrinsic among public policies and competition policy is one of them
- There is much space for synergies between competition policy and other welfare enhancing public policies in developing countries without distorting competition law enforcement and adjudication of antitrust cases

Synergies: Competition policy and Competition Law enforcement externalities on public interest goals. Examples from Latin America

Agency Country	Year	Case	Public interest goals
COFECE Mexico	2021	Collusion between 17 football (soccer) clubs: Caps on female players' salaries and segmenting the players' market. Positive effects: on the labor market of football players, eliminating restrictions on competition, but also and particularly, reducing the gender wage gap	Employment, labor market conditions, gender equality
COFECE Mexico	2019- 20	Competition advocacy actions (including constitutional controversy against Supreme Court) to avoid exclusionary rules affecting growth and entry by solar and wind electricity generators (Greco & Viegens, 2021)	Sustainability
SIC Colombia	2021-	Investigation against the football association and 16 clubs for anti-competitive agreements (no-poach agreements, preventing competing clubs from hiring players ending their contractual relationship with a club)	Employment, labor market conditions
CADE Brazil	2019-	Investigation for collusive conduct (leniency application) in the market of workers in the industry of products, equipment and related services for health care, in Sao Paulo. Systematic exchange of information between competitors regarding remuneration to employees, and wage fixing episodes.	Employment, labor market conditions
CNDC Argentina	2016- 2021	Competition advocacy and antitrust investigation: recommendations to eliminate regulatory barriers to competition, antitrust structural and behavioral remedies to allow competition. The case was key to unlock Fintech development and competition in digital payment markets, allowing access to financial services to previously excluded consumers (Greco & Viegens, 2020)	Financial inclusion
Several	1980- 2000	At least 21 percent of the cartels detected in LAC involved essential products such as sugar, toilet paper, wheat, poultry, milk, and medicines, directly and disproportionately affecting poor households. (World Bank, 2021)	Protection of vulnerable households

Concluding remarks

- While competitive markets generate benefits over general welfare objectives, **including more goals for competition law enforcement will distort incentives and reduce legal certainty**, investment and innovation needed for competition to flourish and inclusive social goals to be achieved in developing countries
- There are other ways to take advantage of **synergies between competition policy and public interest goals**
 1. **Increasing enforcement:** A predictable and effective application of competition law, which minimizes false positives and negatives, has the potential to increase productivity, innovation and access to goods and services by vulnerable population
 2. **Prioritization:** Allocating limited agencies resources to investigate antitrust infringements in markets with high impact on public policy goals (e.g., fighting cartels in essential goods markets)
 3. **Updating and developing antitrust theories of harm:** including specific characteristics of the digital economy and digital platforms in competition law cases' analysis and investigation

¡Thank you for your attention!