

## **Central European Lawyers Initiative on the role of competition enforcement and competition policy in times of crises**

In recent years, several contemporary crises have threatened our economic welfare and have disrupted economies throughout the world, including the pandemic, wars, and climate change. Growth, innovation, employment, prices, and global supply chains are at stake. Governments need to maintain competition when responding to crises. Based on experience, putting competition on hold may fire back later (an example is the Great Depression) [1] [2].

**Innovation, consumer welfare, and social progress depend heavily on competition, and ensuring a competitive market for businesses that boost the economy is of utmost importance.**

An open, competitive, and dynamic market has been shown to boost productivity, facilitate entry to the market, promote innovation, raise growth, and protect citizens worldwide. Due to supply chain disruptions, we experienced during the pandemic and now during the war, we cannot ignore the importance of competitive markets and diversity, which is why both competition policies and competition enforcement must pay close attention to them. With global inflation rates on the rise, it is becoming increasingly apparent that competition plays a key role in lowering the price of goods and services and increasing the wages of workers. Competition policy has an imperative role to play in boosting competitiveness, supporting democracies, and ensuring that no one is left behind in the current crisis [1] [3].

**Policymakers and competition enforcers should clearly communicate their goals and roles.**

Competition enforcement officials and policymakers need to communicate clearly about their responsibilities. They should emphasize their accomplishments, goals, and roles in a straightforward manner. Therefore, instead of using jargon, such as "efficient market outcomes," we should consider statements like "competition enables us to sell food at a reasonable price or helps young people start their own businesses". Through the use of the abovementioned "human goals" competition enforcers and policymakers strive -basically- to make people's lives better [3].

There may have been success in the communication so far, as recent Eurobarometer surveys indicate that citizens and small and medium-sized businesses (SMEs) support both competition policy and its enforcement. The survey shows that consumers and SMEs benefit from competition since it brings better prices, more choices, and greater innovation. This support is consistent across the EU, reminding us how important fair competition is. According to the survey, 83% of participants agree that competition offers more choices to consumers and 82% agree that it encourages innovation and economic growth. Competition policy and enforcement are also viewed as crucial tools in dealing with future challenges by many respondents. In markets with systemic problems, 66% of SMEs agree that the Digital Markets Act is an effective solution [4].

**A long-term perspective should not be ignored.**

Despite how hectic things are now, we should keep the long-term in mind. We shouldn't respond to the energy crisis and inflation with short-term solutions without considering the consequences to consumers and businesses over the long run [5].

## **Several options exist for dealing with current crises through competition policy and enforcement.**

Competition enforcement cannot resolve all of our recent economic problems caused by our current crisis, competition enforcers can, however, contribute to the development and implementation of policies that address such concerns by providing information to those responsible for designing and implementing them. In addition to easing supply chain constraints, easing energy supply constraints, and easing the impact of price shocks, there are a few other examples of how competition policy and enforcement can actually prove beneficial. [1] [6].

### 1. Promoting growth

Competition authorities played a major role in combating restrictive business practices associated with lockdowns and related health and safety measures during the Covid-19 pandemic. Authorities swiftly acted against price gouging, price fixing, and tying arrangements in essential hygiene products, such as face masks, hand sanitizers, and basic household products. Furthermore, they have authorized horizontal cooperation agreements under the exemptive provisions of the competition laws in exceptional cases so that essential goods and services could be provided during the lockdown period, as well as to encourage research and development activities specifically related to the pandemic, by using exemptive provisions of the competition law. A number of countries, including El Salvador, Malaysia and Singapore, have granted temporary exemptions from competition laws to small and medium-sized businesses' cooperation agreements. Governments' actions during the pandemic demonstrate that competition law plays a key role in addressing disrupted markets and ensuring a balanced economic recovery [7].

### 2. Promoting green innovation.

According to the Competition Policy Brief published by the EU Commission, for the European Green Deal to be successful, everyone, including the private sector and the public sector, must contribute. Clarity is necessary in order to encourage companies to participate in long-term initiatives such as joint investments, the development of solutions, and the production and distribution of sustainable products. It is therefore should be the goal of competition policymakers to provide solutions that facilitate self-assessment, promote sustainable investment, and facilitate effective competition simultaneously. For example, the Commission intends to issue guidelines concerning agriculture-specific derogations arising from one of the blocks of the new Common Agricultural Policy, which will take effect from 2023 through 2027. Through this derogation, farmers will be able to enhance their environmental protection in the agriculture sector, reduce the impact of climate change, and improve animal health and welfare [8].

### 3. Assisting in mitigating the impact of inflation.

The objective of competition law is to protect consumers from unlawful market power, which is defined as raising prices above competitive levels and thereby causing inflation in the short term due to the concentrated economic sectors. Higher product market competition can reduce average inflation rates for a prolonged period of time. In addition, the presence of strong competition enforcement can mitigate the effects of inflation by preventing companies from

using inflation as an excuse to increase prices in an anticompetitive manner, as well as by preventing mergers that could aggravate inflation impacts [1] [9] [10]

### **Climate change must still be addressed.**

The current economic crisis has shifted our attention away from climate change. Our experience indicates that short-term issues such as inflation and recession can be overcome by mankind, but climate change may pose a greater challenge [4].

For the future of humanity, it is crucial that we fight and win the battle against climate change. Competition policy should be charged with creating conditions that enable renewable energy to grow as rapidly as possible. Therefore, among other measures, it entails the application of state aid rules and the simplification of entry into the market [4].

### **The mandates of independent agencies such as competition authorities are expanding. This, however, may pose a risk to the proper functioning of such agencies.**

Despite all of the above, some views caution against expanding the mandate of independent agencies, such as competition authorities. As Nobel Prize-winning economist Jean Tirole explained, independent agencies are addressing government failures with some of their measures. Among the examples is a cartel fine imposed by the European Commission against three German automakers who colluded to slow the deployment of emissions-reducing technology, a matter that should have been addressed by the government. While it was a clear-cut collusion, neither the input nor output markets were affected, and consumers actually benefited from it by receiving lower prices. Because this cartel ultimately adversely affected the environment, it was the Ministry of Environment that should have taken preventive measures, such as establishing carbon pricing floors and implementing aggressive research and development policies, in order to prevent this from happening again. Extension of an agency's mission into the political realm could result in a loss of independence, and multifactor missions raise questions regarding who is in charge and how policies are implemented. By extending mandates to cover broader social and political issues, an agency is subject to being compromised by incompatibility of tasks, undefined expectations, and an inability to assess its performance in that area [11].

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[2] Meese, Alan J., "Competition Policy and the Great Depression: Lessons Learned and a New Way Forward" (2013). *Faculty Publications*. 1704. <https://scholarship.law.wm.edu/facpubs/1704>

[3] EVP Vestager Keynote at the Making Markets Work for People conference, organized by DG Competition, Brussels, 27 October 2022

[https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech\\_22\\_6445/SP\\_EECH\\_22\\_6445\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_22_6445/SP_EECH_22_6445_EN.pdf)

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<https://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp453.pdf>

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