

# 18<sup>th</sup> GLOBAL FORUM ON Competition



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## Session 1. Competition under Fire

### Briefing note by Chair Frédéric JENNY

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The idea behind the “Competition Under Fire” panel is to address the highly publicized set of criticisms against competition” as an organizing principle of free market economies and against the effectiveness of competition authorities’ law enforcement activities.

While a number of competition economists have suggested that economic competition allows the reallocation of resources to their best possible use and promotes efficiency as well as consumer welfare, a set of critics have emerged arguing that there is no guarantee that competition delivers the expected benefits in economies that are beset by chronic unemployment and where the factors of production (capital and labor) are not as mobile as hypothesized by competition economists. These critics are supported in the political arena by those who perceive themselves as “ victims “ of competition, who denounce the economic mantra that “competition promotes the welfare of consumers”, argue that competition has contributed to their loss of jobs or of economic perspective and embrace a populist political philosophy rich in appeals to protectionism.

Others have criticized the static economic competitive framework and argued that there could be trade offs between static efficiency and dynamic growth and innovation. They argue that one of the consequences of the static promotion of competition has been a disregard for dynamic industrial policies which can, when correctly implemented, contribute to long term growth and competition.

Another line of criticism has been fueled by the perceived disregard of competition economists and competition authorities for the distributional effects of competition and for the “unfairness” of international economic competition. International competition is seen as pitting against one another firms benefitting in their home countries from different legal and economic environments. According to these critics, competition in an uneven playing field is unlikely to lead to the expected benefits and will cause “unfair” destructive market disruptions.

A number of criticisms are also addressed at competition authorities’ law enforcement activities and, in particular, at merger control as it is currently practiced.

For example, in the US, in the context of the upcoming presidential election, a controversy has arisen about whether merger control and antitrust enforcement are able to prevent an increase in market power or the abuse of market power in some sectors such as the digital economy. Further, some economists point to an increase in aggregate concentration and profit margins, which they fear are signs of decreasing competition. Some economists and a variety of politicians thus denounce what they perceive to be the “under-enforcement” of antitrust laws due to a narrow interpretation of the mandate of competition authorities and of the tests they apply.

In Europe, there is also a criticism of the merger control tests used by competition authorities. Competition authorities are perceived by some as being too formalistic and too oriented toward the short term and there are calls by governments officials to modify merger control laws so as to allow political bodies to overrule competition law enforcers in some strategic cases.

Finally, in many countries, there is a concern about a perceived lack of relevance to societal goals of competition law and competition law enforcement. For example, in countries where poverty reduction is a major issue, many have complained that the promotion of competition does little to contribute to this goal and may in some cases increase the economic inequality among firms and citizens. In a number of countries,



criticism about the lack of relevance of competition law to the achievement of broader societal goals has fueled a debate about whether public interest considerations should play a role in competition law enforcement, a perspective that tends to be rejected by competition authorities.

This selective choice of criticisms leveled against competition or competition authorities is not exhaustive and the panelists are welcome to add to this list and discuss other critical views of competition or competition law enforcement activities during the course of our discussion.

These criticisms raise several questions, which the panel may examine:

- a) Is the criticism of competition authorities becoming more common and prominent and if so why? Is it because they have gained prominence and therefore attract attention that they did not get previously when their activity was more confidential? Is it because there has been disenchantment with the economically liberal policies of the 1990s and the early 2000s? Is it because societal values have changed etc....
- b) Faced with such criticisms, how should competition authorities react? As public authorities, should we be responsive to the expectations of the public and politicians or should we consider that our role as specialized agencies is to give the proper interpretation of what competition is and what competition law should be about? If the latter, is there something wrong with the way competition authorities have conducted advocated for competition? What are the benefits and costs of not being responsive to these criticisms?
- c) Should we distinguish among the various criticisms and should we consider how to modify competition law enforcement in some areas? If so, what are the criticisms that would merit reflecting on our past practices and thinking about modifying our ways.

Those questions can be tackled either as generic questions or questions addressed when examining a specific point of contention between the practice of competition authorities and public expectations (such as, for example, “merger control and industrial policy” or “competition and poverty reduction” etc...).