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**Heads of Authority Q&A Workshop**

***Moderator:***

**James Keyte**

*FCLI Director and Adjunct Professor of Law, Fordham Law School; Director of  
Global Development, The Brattle Group*

***Panelists:***

**Andrea Coscelli**

*Chief Executive, U.K. Competition and Markets Authority*

**Isabelle de Silva**

*President, Autorité de la Concurrence*

**Cani Fernández**

*President, Comisión Nacional de los Mercados y la Competencia*

**Olivier Guersent**

*Director-General, European Commission*

**Margarida Matos Rosa**

*President, Portuguese Competition Authority*

**Gabriella Muscolo**

*Commissioner, Autorità Garante della Concorrenza e del Mercato*

**Christine Wilson**

*Commissioner, Federal Trade Commission*

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MR. KEYTE: Good morning to part of the world; good afternoon to another part of the world, including our speakers.

As everybody may know, in the live conference the heads of authority have their own workshop and we do not really get a chance to ask questions at the Fordham Conference of heads of authority unless they are keynote speakers. What we thought we would do this year, with a virtual conference, is have a Q&A session with some key heads of authority around the world that will primarily be for the audience. In that regard, what we are going to do is have fairly rapid opening thoughts; I will ask a few questions, and then we will open it up to the audience.

Very quick introductions, and I am doing it alphabetically, not necessarily in order. We have: Andrea Coscelli, Chief Executive of the CMA – you could wave, but everybody knows who you are; Isabelle de Silva, President of the French Authority; Cani

Fernández, President of the Spanish Authority; Olivier Guersent, Director-General, DG Comp; Margarida Matos Rosa, President, Portuguese Authority; Gabriella Muscolo, Commissioner of the Italian Authority and a longtime friend; and Christine Wilson, Commissioner of the FTC, a colleague and sometimes opposing her in private practice back in the day.

The general topics are: antitrust in times of pandemic; are the tools for Big Tech right; and where does sustainability fit in antitrust? Certainly you all should prepare questions that you may have, try to keep them related to those topics. I am sure there will be some others, but we will get to choose, frankly.

Why don't we start off with some quick observations or comments from each of our excellent panelists? I don't know if they have chosen an order, or I could choose one for them. Why don't we just do it alphabetically as well?

Andrea, why don't you start?

MR. COSCELLI: Thanks, James.

Just a couple of thoughts from me on the pandemic. One of the things we did in March, when we had the first wave in the United Kingdom, was to launch a task force to work across the organization to try to react very quickly to events, which we think has been a fairly successful model for us.<sup>1</sup> Essentially, our work focused on three areas.

One was to monitor prices and deal with lots of complaints coming in about price increases for things like face masks, hand sanitizers, or food products. We wrote lots of letters, we worked a lot with trade associations, and opened a number of targeted investigations in this area.

The second area was cooperation among businesses. We published very quickly some guidance and then we worked closely with government to pass legislation to allow for cooperation in a number of key areas, like healthcare, groceries, and dairy. Interestingly, some of these had sunset clauses, so

some of these agreements had exclusions from this agreement that ended in the last few weeks.

Finally, because we are also a consumer protection authority, we have done a lot of work on cancellations and refunds – or I should say lack of refunds – by a number of businesses. We have a number of ongoing investigations and we have reached settlements with a number of businesses to ensure that they refunded the many, many consumers who suffered during the first wave.

Unfortunately, it feels like there is the beginning of a second wave in a number of places in Europe, including the United Kingdom, so we might have to go back and do a number of these things again in the coming months.

Thanks. That is what I want to say by way of introduction, James.

MR. KEYTE: Isabelle?

MS. de SILVA: I want to say that this

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<sup>1</sup> <https://www.gov.uk/government/publications/covid-19-cma-taskforce/cma-covid-19-taskforce>

period has been one that has taught us a lot in terms of how to organize the workforce. I think, like for many private and public organizations, this was a big challenge for us, and it also was very instructive to see how we could organize working from home to maintain our mission.

I would say that one of the priorities that we had during this period was to maintain a steady flow in terms of merger notifications and approvals. We tried as much as possible not to delay merger examinations and to maintain a rapid flow of decisions. This was quite a challenge for the teams, but we maintained a steady flow of decisions.

In regard to the impact of the Covid-19 crisis on possible antitrust practices, I think, like Andrea described for the CMA, we put in a lot of effort in terms of trying to respond to questions from the private sectors. There were not that many questions that were asked to the authority, maybe because there is not a tradition that we easily answer

any questions they may have about "Is that argument compatible with antitrust law?"

We had one in which we gave an answer and we publicized it. The question was whether opticians could decide together the way in which they would pay their rent during the Covid-19 crisis.

In terms of antitrust practices, we set up a Covid-19 task force to get as much information as possible about possible infringements, and we did receive quite a lot of information from the market about possible abuses.

We also had one case that we dealt with in a very speedy manner because it was in the French office, an exclusivity conduct that might have prevented some hospitals from receiving the materials they needed to deal with Covid-19 patients. This was settled through a discussion with the company, and the company was very proactive in terms of ceasing to practice this exclusivity, so this was settled in a matter of days.

This was what I wanted to say for my opening remarks.

MR. KEYTE: Cani?

MS. FERNÁNDEZ: Hello to everyone and thank you so much. I am very happy to be here with all of you.

In fact, I would like to transmit three ideas in my opening remarks: how we dealt with treating the pandemic internally; what we did at the national level; and what we were doing at the international level?

Internally, as for everybody, the shock was immediate. From one day to the following we had a state of alarm declared, so people had to work from home from one day to the following. It has worked remarkably well. We are still teleworking. We have postponed coming back to work because the situation in Madrid and in Barcelona, because we have two headquarters, is uncertain. So we are still teleworking with no problem.



Everybody, including the board, was meeting through teams, and it worked very well. In areas where duty required presence, we were organizing some work shifts so that people could telework or work in person.

At the national level, what did we do for consumers and users?

The first thing we did was to organize a specific mailbox for complaints regarding any antitrust or competition infringement related to Covid-19, and there were over 700 complaints that we were dealing with in different areas, as you can imagine. Sanitary products was one. Another one was private insurance in order to cover treatment in public or private hospitals. Also we had in the funerary sector some cases that were extremely sad.

One area in which we are still investigating is the financial sector, where some of the loans that were granted with a guaranty of the state were linked to other products like insurance or alarm services or

others, and we are still investigating that.

Apart from that, we were also issuing some guidance in cooperation agreements. We did that in several areas as well and it worked well. All of our answers were given in fewer than ten days, and we were doing that in accordance with the guidance received from the European Commission. Olivier will be able to tell us more about that.

Internationally, we were cooperating with other authorities that were having similar problems to ours, and we were trying to exchange views and help each other in understanding how to approach issues that we were having in a similar way.

MR. KEYTE: Thank you very much.

Olivier, you happen to also fall alphabetically in the right spot, given the reference from Cani.

MR. GUERSENT: Thank you, James.

Very quickly, before the Covid-19 crisis, my view is that competition policy was already confronted

with a number of long-term challenges – digitization, globalization, and climate change. At least for the European Commission these were the three big ones. Of course, the Covid-19 crisis added a number of short-term challenges to that, at the same time as it shrank the lead time we have to adapt to the longer-term challenges as well. It made everything more pressing.

We have maybe a specificity in the Commission as we have the pleasure to deal with antitrust and mergers, as do all of our colleagues, and we have the even greater pleasure to deal with state aid (state subsidies) and of course when facing such a crisis this becomes quite a crucial instrument, so it took quite a lot of our time.

When we moved to an emergency response, we had all of the organizational challenges that Cani just referred to – and that all of us had to face, like many, many other organizations and companies.

The first thing to do, was the emergency response. In state aid that meant authorizing quite

large amounts of money to be put into the economy in Europe while trying to preserve the integrity of the single market. This is because, of course the fiscal capacity of the various Member States is quite different and the potential for fragmentation of diverging responses is therefore quite big.

In antitrust – I think Andrea referred to it – we have authorized quite unusual cooperation we would probably never have authorized in normal times. I signed the first comfort letter for the last sixteen years I think in the European Commission, to allow the European manufacturers of generic medicines for intensive care units to step up their production in order to increase their output, which is a typical allocation of production behavior that we would normally prohibit. In that case we actually helped organize it so as not to create permanent damage, in the sense that we organized it in a way that the various participants didn't have access to each other's data.

I think the next challenge will be: How do we move from emergency response to accompanying the recovery while keeping in mind the longer-term challenges that I alluded to at the beginning. For us at least, that will be the next challenge and that will require a careful calibration of competition policy.

MR. KEYTE: Thank you, Olivier.

Margarida?

MS. MATOS ROSA: Hello to everyone joining us today and to my fellow panel members, and, James, hello to you as well.

Given what has been said so far, I think I might as well share some of what has been keeping us busy in terms of current times but also in the short and medium run.

I would like to say we see these times as important times and an opportunity to put our best efforts into seeing antitrust policy embedded in other policies.

We know that policymakers have been extremely busy focusing on health issues, on the economy, on social and labor policies, and rightly so, but without competition policy underlying other policies, that focus can have a cost and that cost may slow down progress in those same policies. We see this as a risk that can be materialized if we relax competition rules.

If you shield markets from competitive pressure and if you relax current rules to a big extent, then you may end up with less innovation, with higher prices, with less consumption, and therefore with slower economic growth. We as a society all have an interest in ensuring that competition policy becomes one of the pillars of the economic recovery in the short and in the medium run.

For this to occur, I think we all – as an antitrust community of enforcers but also of lawyers and academia – must reach out beyond our comfort zone, beyond our inner circle – present here today I have no

doubt – and we must be more eloquent about the positive role of competition policy. I will leave it here for now.

MR. KEYTE: Thank you, Margarida.

Gabriella?

MS. MUSCOLO: Thank you, James.

Good morning, good afternoon, good evening, everybody. I am delighted to take part in this meeting again, although I would have liked more to be with you in person in New York.

We are all living in a time of profound disruption which will impact our countries economically and socially.

First of all, the impact of the Covid-19 outbreak on sustainable development and competition puts national competition authorities in a situation where they must rethink the consumer welfare standard by taking into account new elements not necessarily with regard to prices and quantities, such as quality and innovation perhaps.

Second, these changes should find a practical application into the legal tools at our disposal.

Third, we should start by putting more emphasis on tools capable of entitling decision makers, such as the national competition authorities, to interact with policymakers in a procompetitive manner.

Advocacy represents a flexible instrument to deal with new truths. Through this tool, the Italian Competition Authority interacts with policymakers and, by applying the principle of proportionality, the Authority is able to strike a balance between competition and other policy goals and to soften the actual conflict between antitrust policies and industrial policies.

In more detail, how has the Covid-19 outbreak changed our way of operating? The Italian Competition Authority has decided not to create a specific task force to cope with the emergency



situation. Indeed, the Authority's decision has been that each division will continue its enforcement activity related to other issues. However, the interaction between the Consumer Protection Division and the Antitrust Division has intensified, and the Authority has decided to review its priorities regarding intervention in light of the extraordinary situation.

Moreover, in order to face possible essential products shortages during the Covid-19 outbreak, the Italian Competition Authority published a Communication on Cooperation Agreements in the Covid-19 Emergency, which was in line with the one published by the European Commission in April 2020.

I will stop here. Thank you for your attention.

MR. KEYTE: Thank you.

We will go to Christine, who for her entire life has dreaded the phrase "let's go in alphabetical order."

MS. WILSON: Only since I got married, James. I was Christine Bravery before I got married, so I was slightly further up in the alphabet.

In any event, it is a pleasure to be here. Fordham always hosts a wonderful event, and I am sorry that we cannot be together in person, but it is delightful to be here on this panel with some of my favorite colleagues.

I am going to talk about one of the other topics that James has chosen for today's panel. I would like to share some breaking news. The House of Representatives in the United States Congress has been conducting an investigation into the tech arena for the last year and a half, and they finally issued their long-awaited report. Last night it landed.

To be precise, this is a report of the Antitrust Subcommittee of the Judiciary Committee of the House of Representatives in the U.S. Congress. They had conducted a series of hearings examining online platforms and market power, and last night the

report when it was issued totaled 449 pages with 2540 footnotes. I have read a chunk of it, focusing on the Executive Summary and on the Recommendations. I am still making my way through the rest of it. I am sure we will have an opportunity to talk a bit more about it, but I have some cause for concern regarding some of the recommendations and look forward to talking about that.

I want to emphasize for our international audience that this report does not mean that the antitrust laws in the United States are changing today. This is a report from the majority of a subcommittee of the Judiciary Committee in the House of Representatives in the United States Congress. They have signaled that they are thinking about introducing legislation in the coming months, but until new laws are passed the laws will remain the same.

While the House Judiciary Committee was working on this report, the Federal Trade Commission

and the Department of Justice and the state attorneys general in the United States have also been incredibly busy on this front. I want to just highlight some of the activities of the Federal Trade Commission.

As many of you know, we held hearings in 2018 and 2019 to examine whether new technologies and evolving business practices might require adjustments to competition law and policy. We created the Technology Enforcement Division within the Bureau of Competition to address markets in which digital technology is an important dimension of competition.

It has been widely reported that both DOJ and the FTC have ongoing investigations of digital platform companies, and it has been publicly announced that we are conducting what is called a 6(b) study, a market study, on acquisitions that have been made by Google, Amazon, Apple, Facebook, and Microsoft that did not meet the requirements of the Hart-Scott-Rodino filing regime and so were not prenotified to the FTC and DOJ, and this study will help us determine whether

there are potentially anticompetitive acquisitions of nascent or potential competitors that are flying under our radar.

Obviously, as all of my colleagues discussed, tech is getting a lot of headlines, but healthcare matters are of significant focus during the pandemic, and I am sure we will be talking more about that as well.

Before I wrap up, let me just say with respect to the current time in which we are operating that my colleagues at the FTC and I moved to telework in March. We are still essentially 100 percent on telework, and I am blown away every day by the commitment and professionalism and dedication of the FTC staff who continue under suboptimal circumstances to do incredibly excellent work and it is my privilege to work with them.

MR. KEYTE: Thank you, Christine.

I will ask a few questions to start. I will ask everybody who has a view to give me very short

answers, which may be difficult, and then we will have some time for some other questions from the audience at the end.

Let me stay with tech first. Let me ask if anybody has a strong view on whether the challenges of Big Tech multisided platforms should be one for the courts in an iterative process or should it be one for legislation? Have at it.

Olivier?

MR. GUERSENT: I would say both from a European perspective.

What have we seen in the recent past? We have seen that these markets are tipping markets with very powerful network effects. At the same time, they are very complex markets for which you need to crunch incredible amounts of data to simply establish the facts and prove the case. Of course, rights of defense and processual rights are rightly there to protect everybody, but all this takes time. The problem we have is that there is a discrepancy between

the speed of the investigation and the speed at which undesirable effects spread in the market, and sometimes you are able to prove your case so late that the effects are irremediable.

I think, on the one hand, you could legislate because there are a number of behaviors that, at least in Europe, have been proven harmful repeatedly when put into effect by very large platforms. You could say, "Well, listen guys, if you are in that box and if you are doing one of these behaviors, it is prohibited, or it is prohibited unless you can prove it is beneficial," for example. That, I think, would require, at least in Europe, legislation. We cannot do it with existing antitrust tools.

But of course, for the traditional Article 101 and 102 antitrust cases, the courts will continue to have a very, very strong role to play because we will continue to enforce Articles 101 and 102 of the Treaty very forcefully in the future as well.

Clearly, the courts will also have a role to play, in the frame of the new instruments I just referred to, if we ever forge them.

So both really.

MR. KEYTE: Thank you.

Any other strong and short views, Andrea?

MR. COSCELLI: Yes. I agree with Olivier.

I think if you look at the financial market, to me it is a relevant comparison, where you have quite a lot of extra regulation in place because of the persistence of some of the behaviors that worried us over the last ten or fifteen years, but you still have strong antitrust enforcement in some areas. So, the courts will always play a role certainly in antitrust and certainly on any sort of regulatory framework that is added to it.

I think there is an issue of speed. There is an issue also of case law in antitrust, which obviously is interpreted as the way that they test your view and the burden of proof on agencies, which



is linked to a number of historic tech cases, so there is very strong documentary evidence, very strong evidence of historical behavior. I think the issue with a number of these tech cases is their fast-moving nature, their complexity, and the fact that the evidence keeps moving in a way, so you are trying to deal with a moving target.

We are very much in the same place. We are advising the government in the United Kingdom that we need more regulation alongside our existing work using our current toolkit.

MS. WILSON: James, if I can hop in for a minute.

MR. KEYTE: Yes, sure.

MS. WILSON: Obviously, Big Tech is a significant focus of concern – and we are not just talking about antitrust concerns; people have concerns about privacy and about data security and they have concerns in the United States about Section 230 and content moderation and harmful content posted online,

in addition to the competition concerns that we have. So when you ask, "Is regulation appropriate or do we leave this to the courts?," I would say in some areas I do believe that new laws would be helpful.

The Federal Trade Commission, on a bipartisan basis for probably fifteen or twenty years now, has asked the Congress in the United States to pass comprehensive federal privacy legislation and data security legislation. I think that if there had been limits on the kinds of information that could be collected and how that information could be shared and used and monetized, we may see a different competitive landscape.

I have taken again this opportunity to encourage Congress to pass federal privacy legislation. It would be great to see data security legislation, and it would be great for the United States to figure out how it wants to deal with revisions to Section 230.

That said, I believe that on the competition

front the tools that we have and the case law that we have are fit for the purpose. I do not believe that we need new laws in the antitrust arena – and perhaps we will talk a bit more about that – but my view now is that case law, for the most part, is headed in the right direction and giving us the answers we need that will maximize consumer welfare.

MR. KEYTE: Great.

I am going to direct the next question to those who have not taken on a question yet, and focus on abusive pricing – something that, of course, in the United States some would say is not encompassed by the laws there, and I know there are difficult standards to meet in the Member States in the European Union – and then you put on top of that the pandemic.

Addressing the rest of the panel, how do you deal with abusive pricing in a time of pandemic, where even some of the pricing may not be viewed as being by dominant firms may still be viewed as abusive in a sense? Have you had to make any adjustments in those

standards or how you review that? And then maybe, Christine, you could comment at the end about whether it has had any impact on the thinking in the United States, given the law.

MS. FERNÁNDEZ: Let me start because we did have some situations in Spain in which we were confronted during the pandemic with several episodes of excessive pricing and our Ministry of Consumer Protection had to react. They were imposing some caps for certain products, in particular health masks and hydro-alcoholic gels.

We were being consulted. We were providing some guidance. We were taking care that it was a very short measure, that it was proportionate, that it was really just to stop a particular situation, but I believe that, with the exception of these very specific elements of crisis or procedures of crisis, we should be vigilant more in trying to avoid barriers to entry than fixing prices themselves. If needed, you can go, but it has to be short and proportionate

in my view, and of course for reasons of general interest.

MR. KEYTE: Isabelle or Margarida?

MS. de SILVA: Yes, thank you, James.

The question of price is quite interesting when you look at the choices that were made by France. In France one of the reactions to the pandemic was to adopt a great number of specific laws and decrees regarding this sanitary crisis, and the choice was made to put a general cap on prices of hydro-alcoholic solution and protective equipment. This had the effect that all vendors decided to apply the maximum price set by the government, but the government decided when the emergency period came to an end this summer in France to do away with those price caps.

We had two months of practical unique prices in France and now we are again with prices that compete against each other. I think that for the economic analysis it would be quite interesting to see a real effect of price cap on the market and the pros

and cons.

This means that we did not have that much action in terms of abusive prices, so this was more dealt with by the agency in charge of protecting the consumer against fraud or products that were sold with abusive prices regarding consumer protection. In our agency so far we did not have that much demand in that respect.

MR. KEYTE: I am going to move on to another topic. I think Gabriella and Margarida may have been ready for this, but there are some interesting questions coming in.

One question that is a combination of what is coming in and some thoughts I have had for Gabriella, given your background in intellectual property as a judge for so long, is: How do you give good *ex ante* advice, advice in advance, for businesses that are in the platform space and have intellectual property rights? How do they get guided by the agencies when in fact they often do not know what is

going to be challenged or scrutinized until much later, after the behavior has been in the marketplace?

MS. MUSCOLO: Thank you, James, for your question. It a very tricky one.

The Italian Competition Authority advocates for competition, but advocacy is directed to public administration and not to stakeholders. Furthermore, we have not had advocacy cases until now on dealing with the interplay between IP and competition.

MR. KEYTE: Margarida?

MS. MATOS ROSA: Let me say I agree with what Christine was saying before, in the sense that there is a lot of legislation around consumer protection that still needs to be fully implemented and used before we quickly jump to the conclusion that we need to change our legislation in terms of competition policy.

Competition policy amendments may also be required, but I believe that consumer protection has a lot of laws on privacy, especially in Europe, that can

be fully used to the benefit of consumers.

This leads me to say that we are not in the consumer protection business as an agency, but we do several things. We can provide guidance to individual companies that request our guidance if they are in difficulties in assessing what they should do – of course, not always; more in the pandemic period than, generally speaking, in other periods of time.

But when we did our assessments in a sector inquiry on e-commerce, on the use of algorithms, on basically the different business models that are used by platforms, we did come up with one conclusion and one recommendation to companies, which was that companies are responsible for the algorithms they use.<sup>2</sup> Of course, this only responds to the collusion side, not to the other sides of the discussion, but at least we came up with that conclusion and that recommendation, that companies are responsible for the

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<sup>2</sup> See AdC's Issues Paper on "Digital ecosystems, Big Data and Algorithms" (2019) available at [http://www.concorrenca.pt/vPT/Estudos\\_e\\_Publicacoes/Estudos\\_Economicos/Outros/Documents/Digital%20Ecosystems.%20Big%20Data%20and%20Algorithms%20-%20Issues%20Paper.pdf](http://www.concorrenca.pt/vPT/Estudos_e_Publicacoes/Estudos_Economicos/Outros/Documents/Digital%20Ecosystems.%20Big%20Data%20and%20Algorithms%20-%20Issues%20Paper.pdf). Executive summary available at



algorithms they choose and for the outcomes that these algorithms may grant them.

MR. KEYTE: Thank you.

We just have a few minutes left. What I would like everybody to comment on very quickly, if you have a view, is whether in the age of Big Tech and digital economies around the world, do you think the consumer welfare standard needs to change, needs to evolve, or is it still just fine?

Why don't we go in reverse-alphabetical order, if that's okay, starting with Christine.

MS. WILSON: Absolutely.

I do have a view. I believe that the consumer welfare standard, which is currently the touchstone of antitrust enforcement in the United States and in many other jurisdictions, is incredibly flexible. We take into account price and cost and choice and quality and output and innovation. In fact, between 2004 and 2014 more than 160 cases were

challenged by the Federal Trade Commission, and in almost half of them we had a claim regarding suppression or diminution of innovation.

There are those who say that the consumer welfare standard is only about short-run price and output, and I would ask them to look at the kinds of cases that the agencies have been bringing for a very long time, and I would submit to you that in fact innovation is a significant part of what we do.

Though I believe here in the United States we have the Sherman Act and the Clayton Act, which have broad flexible standards, their application is informed by the consumer welfare standard, which focuses on the benefits of consumers without diluting by focusing on other goals, including sustainability, except as a nonprice aspect of competition – sustainability could be one; privacy could be one. I would submit to you that that is what is going to deliver the greatest benefits to consumers in both the short and long runs.

MR. KEYTE: Given our time, I will probably ask everybody to say, first, do you agree with everything Christine says, which I think it was very well said, and then we can get your very quick views, starting, going in reverse order, with Gabriella.

MS. MUSCOLO: Thank you, James.

Before the Covid-19 outbreak, there was already an ongoing debate on competition, sustainability, and consumer welfare. Covid-19 has only enhanced the debate in relation to the healthcare sector, in my opinion without adding anything new to the theoretical framework.

Indeed, do you remember, James, last year during the Fordham Antitrust Workshop with Scott Hemphill and Tim Wu we were discussing whether the consumer welfare standard approach could be considered a significant step forward for antitrust policies? I have already mentioned the changes in the consumer welfare notion in my opening statement.

Let me close on a last point. In this

context, I believe that we should take into account how competition law reacted after the 2007-2008 financial crisis. Competition should not be restricted in the name of other public interests – such as financial stability, for instance – because in the medium to long term it could harm consumers even more.

MR. KEYTE: Thank you.

Margarida?

MS. MATOS ROSA: I believe the scope of competition analysis can be kept pretty much the same. This, of course, does not mean that we cannot add other perspectives into areas – such as State Aid, for example, if we want to talk about sustainability, which is one of the big topics right now – but, in general, the interplay with other policies can be taken into account but mildly and only in some particular aspects of competition enforcement. In general, I would keep pretty much the scope that we have and leave other aspects to other decision makers.

MR. KEYTE: Thank you.

Olivier?

MR. GUERSENT: I can be quick because I fully agree with everything Christine said, with just one clarification.

At the end of the day, it all depends on two things. First, how narrowly do you define consumer welfare – and I fully agree on price, non-price, innovation, and all this. The second thing is, do you need the same constituency of consumers that suffer a price increase or other reduction of welfare also to be the one that benefits? I think these are the two defining questions.

Otherwise consumer welfare can accommodate, for example, externalities like decarbonization of the economy, etc., very well I think.

MR. KEYTE: Thank you.

Isabelle?

MS. de SILVA: Thank you.

I do fully agree with what Christine,

Olivier, and my other colleagues have said.

Three years ago there was a debate about whether the innovation theory that the Commission had taken into account in *Dow/Du Pont* and *Bio/Monsanto* was something that was completely new or was it something that had always been there in terms of what type of criteria you look at when you do a merger analysis. I completely agree with what Christine has said, that innovation and quality are really at the heart of what we look at in an antitrust analysis.

I think today the debate is more focused for enforcers about new tools, new ways to approach merger or antitrust analysis, and I would like to give some example if we have time.

I think the debate in Europe about the Digital Services Act and the New Competition Tool shows that we are looking at additional tools to those we already have to deal with digital platforms or to deal with other types of competitive issues. So the debate is really about something additional to merger

approval or infringement procedures, and that is really interesting.

Also, when we look at mergers, the recent announcement by the Commission and Margrethe Vestager that she was willing to consider having a new look at mergers that were below the mandatory threshold through a referral system to the Commission by national competition agencies is a very good example of looking at how the procedures can catch all the competitive issues or cases we want to look at and we do not need to change the criteria or the general analytical framework. This is what I believe in.

The debate is more about speed, effectiveness, and covering all the different issues we want to cover.

MR. KEYTE: Thank you.

Cani?

MS. FERNÁNDEZ: I will be brief. To answer the question shortly, yes, I do believe that the consumer welfare standard is the one that we have to

move forward.

But there are many other areas in which regulation is coming in order to try to fill some gaps that we believe we have, and sometimes these may have a problem of collusion in itself, colliding with other objectives. I will use an example that is in my view quite worrisome.

We all believe that privacy is something that in order to protect the consumer it has to be there, and in Europe and elsewhere nowadays we are very vigilant in trying to keep privacy and regulation in order to protect privacy. But now it seems that some big players or some dominant players are using this regulation as a strategic barrier to entry in order not to share data, which is a clear competitive parameter nowadays.

My only warning is, yes, let's go for regulation whenever it's needed, let's go to protect consumers, but never forget that consumer welfare is always at the end of the day the driver for



competition always. So be very vigilant in not over-regulating with the progress that we may face.

MR. KEYTE: Very well said.

Andrea, the last word.

MR. COSCELLI: I will disagree a bit. I will make two points.

On the first one, in terms of whether consumer welfare is wide enough, I am reasonably comfortable that for us as an agency we are interpreting it in the right way. But most of our relevant decisions go through litigation and through the courts, so the question of whether the courts interpret consumer welfare in a sufficiently wide manner is a very relevant one for me.

I think you picked the three right topics in terms of challenges today for competition authorities worldwide: Obviously Big Tech, the fact that a number of people think we have been slow to act in that space; obviously the very significant dislocation of our economies and what is going to happen post-Covid-

19; and sustainability. I think personally the jury is very much out whether over the next few years in these three areas the majority of voters in each of our countries will regard the competition authorities being on the right side of the arguments.

If you take a slightly historical perspective, the mandate and the importance of competition authorities has gone up and down over the years and the decades. Personally, I think we cannot really be complacent.

This debate about consumer welfare for me is very much about whether we are relevant, whether we will remain relevant, and whether among various policy instruments that are available through our parliaments, antitrust and competition policy remain one of the key ones.

MR. KEYTE: Thank you so much, and thank you to the panel.

Next year, hopefully when we see each other live, we will be able to have some version of this

format because I think it is very, very informative,  
we get a lot of perspectives. But we shall see.

Again, thank you all very much.