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What Should Europe's "Do Something!" Moment Mean for Competition?

By Cristina Caffarra

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Mario Draghi's recent plea "Do Something!" before the European Parliament was an exasperated call to action for European institutions failing to adopt the recommendations from his September 2024 report – while Europe's structural economic and geopolitical crisis is deepening. Can European competition policy, which managed to remain broadly impervious to the major antitrust revamp of the previous U.S. administration, also fail to adapt to a profound adverse change in Europe's economic outlook? The signs of spontaneous change are modest. I argue instead that Europe should be on a quasi-war footing to jump start its troubled economy, and competition policy should not hide in its usual safe spaces but proactively support the mission. "Whatever it takes." "Do something!" Fretting about potential future market power in selected key strategic sectors is a rich-people's problem we can park for a while.

The implicit consensus persisting among competition practitioners and academics in Europe is that we have somehow reached "the end of antitrust history,"[2] the pinnacle of understanding and insight on competitive conduct; and yes, we could do better at the margin with empirical evidence, we do introduce little innovations from time to time ("killer acquisitions" and the like), but by and large "the house is built." We have consumer welfare, efficiency, theories of harm and "techniques," all of which underpin the single clear mission of preventing "lessening of competition" – because "competition is what you need to drive innovation and growth."

This certainty, which senior lawyers impart to associates ("it's written on Moses Tablets") and consultants to their juniors, sealed by academics who orbit in the same bubble, is still the mainstream of European antitrust practice: how markets and conduct are assessed, how remedies are designed. A corollary is that any attempt to expand the objective function beyond the established triad ("choice for consumers, level playing field for rivals, protect competition") is met with shrieks of "populism!," or punted to the word of our "grandees" who tell us it is to be absolutely avoided because it involves "other goals" that either cannot be possibly cognizable by an antitrust agency, or cannot be traded

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[2] In the sense used by Lina Khan, *The End of Antitrust History Revisited,* Harvard Law Review April 2020 1655-1682_Online.pdf. She describes how all the way to 2017 multiple U.S. review bodies issued the conclusion that there was "agreement within the antitrust community that, despite ongoing debates about specific doctrinal tests or particular standards of proof, antitrust law was, altogether, on the right course. The fact that antitrust had shed its public appeal in favor of an expert-driven enterprise — becoming "less democratic and more technocratic" — was generally seen as further evidence of its success."

off, or "best left to politicians to decide." Antitrust has reached its final status and cannot be polluted with extraneous factors.

This received wisdom in Europe has not been shaken much by one major "vector of change" over the last 5 years: the Progressive Project which upended antitrust enforcement in the U.S. For their brief time in office, Biden administration enforcers pursued the reinvigoration of antitrust as part of a broader vision: the fundamental belief that concentrated power is problematic in multiple dimensions (for consumers, workers, /small rivals, ultimately democracy); and we can and must pursue goals of fairness and equity. In addition to a number of successful court challenges, there was an expansive effort to address the multiple injustices and indignities that individuals and small businesses face in their daily life, and to update guidelines and rulebooks to move beyond the neoliberal conventions of the prior 20 years. Most importantly, the attempt at an "all of government approach" meant "antimonopoly" was recognized as a common thread across multiple policy areas. It is not clear what of this will remain in the U.S. with the Trump administration, though the early signs are that the rollback may not be complete.[3] Yet for all the attention it got in the U.S., Europe (with the exception of the UK) remained quite impervious to this major progressive upheaval and by and large did its traditional thing.

But there is now a second much more immediate and dramatic "vector of change" underway. Europe is buffeted by unprecedented economic challenges with worsening prospects, so serious they led Mario Draghi exasperatedly to exclaim "Do Something!" at a Hearing in the European Parliament last February 18.[4] Six months after his seminal report of last September,[5] none of the recommendations in the report (from industrial policy initiatives to progressing the Single Market to creating a capital markets union) seems close to being adopted, while the Commission issued its *Competitiveness Compass*[6] with lots of timelines but no detail (but complete with fetching diagram of, indeed, an eight-point compass). The crisis is so existential and profound for Europe

[3] There is a perception that the new DOJ AAG Gail Slater is pro-enforcement, rather than *laissez faire,* on mergers and conduct; and so is nominated FTC Commissioner Mark Meador. FTC Chair Andrew Ferguson's communication on February 18 the agencies would keep the 2023 Merger Guidelines is also regarded as significant: FTC Chairman Andrew N. Ferguson Announces that the FTC and DOJ's Joint 2023 Merger Guidelines Are in Effect | Federal Trade Commission). He also indicated in recent speeches that he would persist with aggressive enforcement against illegal mergers: FTC Chair Andrew Ferguson: Antitrust Laws to Be Vigorously Enforced - Bloomberg February 24, 2025.

[4] "You say no to public debt. You say no to the Single Market. You say no to creating the Capital Markets Union. You cannot say no to everything. Otherwise you must also tell me, to be consistent, that you are not able to deliver on the fundamental values on which this European Union has been created. So when you ask me What is best for us to do now? I say: I have no idea. But DO SOMETHING." Mario Draghi speech at the European Parliament, February 18, 2025 Bing Videos.

[5] The Draghi report on EU competitiveness, September 9, 2024.

[6] EU competitiveness - European Commission, January 29, 2025.

(compounded by geopolitical and ideological challenges from the Trump administration, Russia, and China) that it cannot fail to bring about soul searching around the enforcement effort. And indeed, we are beginning to see signs that (either proactively or through coercion from politicians) the crisis may perhaps finally catalyze a rethink of the role and purpose of competition policy in Europe.

I. Just How Bad Is the European Crisis?[7]

The diagnosis is dire. And it is worth spelling out because it is not clear to me the European antitrust world has remotely grasped the reality in which we now operate (with the exception of agency leads, who are more attuned to political winds).

Having adopted for two decades an economic model based around exports (mostly of cars), keeping a lid on wages to remain competitive in foreign markets, Europe is being squeezed on the one side by China's huge trade surplus and success in upgrading its export industry to producing exactly what Europe is good at (automotive, clean tech, aviation and machine building), in addition to a huge range of other goods; and will be squeezed even more, on the other, by the U.S. (a huge destination for European goods exports) introducing tariffs and/or reducing their willingness to play "importer of last resort" any longer.

The primary effect of the massive increase in European imports from China has been a dramatic impact on German industry, with a fall in industrial output for the last five years (dragging down related production in other Member States, e.g. Italy). and decline in domestic consumption spending as wages remain depressed. With the German car industry, the beating heart of Europe, faltering, and nothing comparable to the huge digital sector which stands for so much of U.S. market cap, it is unclear where a major jump in productivity for Europe could come from. There are some areas of promise – Germany's green tech industry has done comparatively well, for instance, but this has also been significantly boosted by U.S. industrial policies: IRA spending turns out to have generated a significant growth in green tech imports in the U.S. (as shown by Tordoir), but this boon may not be persistent in the future. And European champions like Northvolt, the Swedish green battery cell producer, filed for bankruptcy. Multiple other Mittelstadt/SMEs are struggling in Germany and elsewhere in Europe.

All of this compounds the structural problem whereby failing to complete the Single Market involves effective barriers to intra-European trade that have been recently calculated by the IMF to be *equivalent to a 45 percent tariff on goods traded between Member States* (even higher, *110 percent,* for services). These staggering statistics, quietly fired off at my

[7] The analysis here owes much to multiple papers and postings by Sander Tordoir & Brad Setser, including How German industry can survive the second China shock | Centre for European Reform, January 16, 2025.

conference by IMF's James John[8], and reprised by Mario Draghi in an FT piece saying "Europe does not need to wait for Trump tariffs, it has its own,"[9] gives a sense for how much the elimination of these barriers would create an incentive to scale up. Indeed, James John went on to say that if intra-EU trade barriers could be reduced to U.S. levels (not even eliminated altogether), the direct impact on productivity would be *seven percentage points* in the long term – *huge*.

Meanwhile, the European digital industry is fragmented and increasingly struggling to preserve a role against colonization by U.S. hyperscalers at every level of the digital stack.

The impending Second China Shock and U.S. threats on tariffs – on top of our endemic structural problems – involve for Europe an extremely precarious position as a continent fragmented, where companies find it very difficult to scale, firm expansion beyond national borders is rare, and startups migrate or get acquired.

II. Back to Antitrust: How Is This Anything to Do with Us?

If the first vector of change (the grand U.S. progressive vision of wielding antitrust as a tool to deal with concentrated corporate power) did not really catch in Europe, can this second far stronger and more immediate vector of change fail to make any impact on how we think of antitrust's mission? Or is it business as usual?

A resilient "orthodoxy" is clinging to the idea that antitrust should not be "polluted" with other goals; or that it "cannot do very much in practice to bring about growth," in which case why bother to do anything different. For intellectual underpinnings, this group looks both at "usual suspect" think tanks fixated on consumer welfare and funded by large corporations (typically Big Tech), or to a few revered economics professors whose position seems to have settled around 2001 that antitrust should not pursue "public interest considerations"[10].

There is also a persistent line which continues to conflate the intellectual effort of engaging with the question of whether antitrust can assist a growth effort, with the inevitable creation of "national champions" which – we are admonished especially from U.S. antitrust grandees[11] – are truly, really bad. Quite why proactively thinking about competition's role in industrial policy should mean support for "national champions" is a mystery to me.

But some modest signs of flex are beginning to appear.

The most obvious is the UK, where the deepening economic crisis and the government's increasing anxiety around lack of growth has led to direct political

[8] "Managed Decline," or Worse? Can Industrial Policy Save Europe?, *The Perfect Storm Conference*, Brussels January 30, 2025.

[9] Mario Draghi, February 14, 2025 Forget the US — Europe has successfully put tariffs on itself.

[10] *Should Competition Monopolise Merger Policy?* Sir John Vickers' ACE Keynote Lecture, Milan, November 16, 2024, Vickers Milan Lecture.

[11] Bill Baer, January 7, 2025, What the US Learned and the EU Should Consider About National Champions - ProMarket.

intervention on the mission and purpose of the antitrust agency. The CMA had sought to ride the progressive wave while the government was preoccupied elsewhere with Brexit, but found itself trying to bite off more than it could chew challenging global deals in a post-Brexit solitary world, and has been summarily turned inside out. The government removed the Chair, replaced him with a former Amazon and ASDA executive described as more "business friendly," and mandated the agency to adopt a "pro-growth"/"pro-business" strategy. For all the CEO's valiant efforts to put a brave face to this upheaval and say much of the fuss was not about substance but about "perceptions" (of "speed, predictability, proportionality, better process"),[12] the UK government has made clear it expects a new vibe at the CMA, more "growth oriented."

Is this the disaster all right-thinking commentators think it is? While many have worried about the CMA's "sellout" and politicization, I do not think so, if it leads to more pragmatic considerations of the *realpolitik* facing the UK, and promotes analyses that take into account the macro environment and the broader competitive landscape that businesses operating in the UK are dealing with. Along the same lines, while approval of the *Vodafone/Three* merger premised on investment remedies generated much horrified commentary from UK civil society and academics[13] attached to the unsurprising result that fewer MNOs will lead to higher prices to consumers, I do not find it particularly disturbing - provided the remedies are monitored. Let's experiment and not be so dogmatic. (And by the way, it's not as if our record on remedies of the "traditional" garden variety, based on our received wisdom, is stellar anyway: a recent report for DG Competition finds they very often just do not work[14]).

Short of government coercion, there are a few timid signs. At my *Perfect Storm* conference, five heads of agencies (France, Germany, the Netherlands, Portugal, and Poland), sought to articulate a role for antitrust agencies in the Draghi mission, emphatically away from allowing more mergers.[15] They talked about abating the silo that competition has been operating in, the inevitable "role of regulation," connecting with trade policy and industrial policy, "competition not as a goal in itself, but also as a means to achieve other objectives," and "as a powerful economic policy tool." They talked about "infusing competition in industrial policy design."

[12] Guardian February 18, 2025 'We must avoid a chilling effect': the CMA chief on... ; CMA February 13, 2025, New CMA proposals to drive growth, investment and business confidence – Competition and Markets Authority.

[13] The only winners of a Vodafone-Three merger would be shareholders – the UK must block | LinkedIn. Also Duso & Peitz, February 2025, III. Facts and fiction in the Draghi report - Concurrences.

[14] DG Competition, Study "Ex post evaluation of the implementation and effectiveness of EU antitrust remedies." February 20, 2025, d04025e4-fd50-4ac4-8336-01a7bdf92713_en.

[15] Absent Without Leave? How Does Competition Policy Fit the "Competitiveness" Mission?, *The Perfect Storm Conference,* Brussels January 30, 2025.

Still overall hesitant to leave the orthodox "Competition Church," (a term they used) but trying to engage.

More surprisingly, European Commission EVP Teresa Ribera in a very recent speech in London[16] opened up explicitly to the notion that we may well question the received antitrust wisdom in the current climate crisis. While speaking mostly in her capacity as green transition Commissioner, she also articulated explicitly the notion that fairness is central to the purpose of ensuring competition, that the goal needs to encompass "environmental and labor standards," that both trade and competition tools must be used together to serve wider social goals, and sustainability may be deemed an efficiency. Having been put in charge of a curious hybrid portfolio (Green Transition and Competition) by President Von Der Leyen, it is perhaps not surprising that an environmentalist turned antitrust chief would start taking steps in this direction. It is a small step, but perhaps a significant first one for a highly conventional agency.

Are these glimmers of evolution a delayed reaction to the Progressive revolution in the previous U.S. administration? Or something catalyzed by the pressing economic crisis Europe is wading through? Either way, something may be finally brewing.

III. What Else Should We Be Thinking About?

While this is perhaps a start, we are starting from a low base. Having put the issue of industrial policy, trade and competition on the map, I recognize the gravitational pull of the orthodoxy is extremely strong and the resistance to intellectually engage with "what's staring at us in the face," retreating into our "competition safe spaces," is still overwhelming. There is more real thinking that needs to be done on how competition policy can assist Europe "jump starting" the growth we desperately need, reverse our "Detroit moment" and avoid further deindustrialization (it is already happening). Because *this* is what is ahead of us if we persist in what Mario Draghi described as our failure to "do something."

We should certainly proactively wield competition principles to inform the design of other policies – trade and industrial policy (as and when we finally get around to formulating one). This is the easy part. For instance, how do we use competition principles to inform procurement strategies that require we "Buy European"? How do we do that in ways that are not distortive, without at the same time dancing on a pin for ages around "nondiscrimination" rules?

But I would go much further. The situation Europe finds itself in is so devastatingly serious that it justifies another "Whatever it takes" approach (Mario Draghi's most famous catchphrase from the Euro crisis). We absolutely need to prioritize strategic autonomy in defense, digital supply chains,

[16] Teresa Ribera, London School of Economics February 17, 2025, Is it possible to achieve fair and inclusive prosperity without a green agenda? | LSE Event. She also talked about "tweaking merger control rules" to take into account environmental and social goals in an FT interview, although there is no detail and of course this should not be a signal that any old story on environmental and social benefits would get a deal through.

green tech, communications. We should be on a quasi-war effort footing in multiple critical sectors. Which means we need to create conditions for consolidation and scale. There need to be active sectoral support policies. And while merger policy is arguably already relaxed, I would favor it remaining so (rather than being tightened) in critical sectors, with a clear sense for tradeoffs. Not as a generalized policy but for selected sectors critical to our sovereignty. I would not care for the national champion scaremongering. *We do need European success stories.*

Conversely, we should be unabashedly willing to abandon nondiscrimination rules and allow pro-European discrimination criteria and pro-SME policies to be adopted – again, e.g. in procurement.

The consequences of failing to shore up Europe's economy are too serious to worry now about harm way into the future. Yes, we want to ensure competition always as a first best but there are emergencies when what really matters is coming out alive at the other end. *Do something, whatever it takes*. Tradeoffs can be explicit, and if we get the luxury of eventually creating some scale, resilience and autonomy, we will consider what to do with some market power then.