



...with Margrethe Vestager

In this edition of CPI Talks, we have the pleasure of speaking with Margrethe Vestager, Executive Vice President of the European Commission for A Europe Fit for the Digital Age, since December 2019, and European Commissioner for Competition since 2014.

Thank you, EVP Vestager, for taking this time to talk to CPI.

1. You have spoken about the importance of inclusion in the digital context, including in December at the EU Council's Conference on Rights and Values in the Digital Decade.¹ Do you see a role for antitrust in fostering inclusion? What does “inclusive antitrust” – the title of this CPI Antitrust Chronicle – mean to you?

Antitrust definitively has a role to play in fostering inclusion. Since the foundation of the EU, competition law enforcement has been paramount to preserve and foster European democratic values, inclusiveness, and a European business culture. These values are about fairness and equal opportunities, both of which are closely linked to inclusiveness.

Competitive markets are key drivers of economic growth and productivity, enhancing innovation and choice for consumers. This is particularly important during economic crisis times so that the best, most productive and innovative companies, big and small, can grow and compete on the merits to the benefit of all consumers, women and men alike. In that sense, it plays a significant role in achieving sustainable, inclusive growth and also social inclusion. By ensuring that alternatives are available in the market, competition law enforcement protects EU citizens' freedom to choose and ability to find products and services catering to their different needs.

For example, strong antitrust enforcement in the pharmaceutical sector has been instrumental in ensuring affordable access to medicines in the EU, to the benefit of all EU patients, health systems, and taxpayers. We have had four prohibition decisions against agreements between branded and generic pharma companies what we call “pay for delay cases.” The latest, most important, contribution was the settlement decision in the *Aspen* case last February: the commitments will ensure a reduction by 73 percent in the whole EU for the prices for six blood cancer treatments.

Competition law enforcement also complements other commission policies in achieving sustainable and inclusive growth. For example, the strategic goal of delivering on the ambitious green transition. The European Green Deal is our roadmap for making the EU's economy sustainable. We can achieve this by turning climate and environmental challenges into opportunities across all policy areas. We are gearing up to provide guidance on how companies can join efforts to pursue green sustainability objectives, without foregoing pro-competitive opportunities for fear of breaching antitrust rules. The guidance will build on the premise that effective competition is the best incentive for green innovation, while putting safeguards against “greenwashing.”

We can ensure that competition policy helps making the transition just and inclusive for everyone together with the more direct instruments to make our economy greener: such as environmental regulation, taxation, and green investment.

¹ “Social justice and inclusion are among the core objectives of the European Union. So as more and more of our activities move to the digital space, digital inclusion and ensuring our European rights and values are respected becomes an increasingly important part of our overall promise to Europe's people. This is why it is so important that the Berlin Declaration begins with rights and values, and follows immediately with social inclusion.” Speech by EVP Margrethe Vestager at the EU Council's High-level Presidency Conference: “A Europe of Rights and Values in the Digital Decade,” Dec. 8, 2020 (https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/speech-emp-margrethe-vestager-eu-councils-high-level-presidency-conference-europe-rights-and-values_en).

One of our initiatives is directly relevant for the promotion of inclusiveness. This is our process for ensuring that EU competition rules do not stand in the way of collective bargaining for those who need it. The initiative aims at ensuring that working conditions can be improved through collective bargaining agreements for self-employed who need protection. Both in the digital economy and beyond, some solo self-employed might be in a situation of unbalanced negotiating power *vis-à-vis* certain companies/buyers of labor. In such situations, collective bargaining can be a powerful tool to achieve better working conditions. We recently launched a public consultation that will feed into our ongoing evaluation process to decide on what can be done in the coming months.

Several antitrust decisions have also been contributing to creating a fairer digital single market, by safeguarding the conditions for companies, including SMEs, to grow and compete fairly. In the ongoing *Amazon Data* case, the Commission has preliminarily found that, by using its dominant position in the marketplace, Amazon collected and used non-public commercially sensitive data from independent retailers to support its own retail business. With our proposal last December of the Digital Markets Act, we aim to address the entrenched position of digital gatekeepers harming the interests of business users and consumers in the EU. It complements competition law enforcement by regulating systemic issues caused by digital gatekeepers and unfair practices that cannot be tackled effectively by antitrust rules. This initiative aims at facilitating the development of businesses of all sizes that heavily rely on platforms to access their customers. This includes SMEs, but also self-employed individuals.

2. In the past few years, some countries have started applying a gender lens to policy and enforcement decisions. Sweden, Canada, Luxembourg, France, and Mexico, for example, have announced Feminist foreign policies that apply such a lens in the foreign policy context. To the extent you have followed these, what is your perception of how useful and/or effective these frameworks have been? Is it time to be as definitive and clearly signal support for inclusivity in antitrust? Is it time for a “feminist* antitrust policy” [*noting that feminist policy has been used to denote not just gender equality, but an approach that is more inclusive of all underrepresented people]?

While there has been some significant but uneven progress achieved in advancing women's and girls' rights, no country in the world is on track to achieve gender equality. The COVID-19 crisis disproportionately affects women and girls. For example, because a higher proportion of women work informally and in vulnerable sectors, their job loss rate is 1.8 times greater than that of men. Violence against women has also increased during the crisis, because of prolonged lockdowns.

On foreign policy, the Commission and our European External Action Service (“EEAS”) adopted a new Action Plan on Gender Equality and Women’s Empowerment in External Action 2021–2025. This plan aims to accelerate progress on empowering women and girls, and safeguard gains made on gender equality during the 25 years since the adoption of the Beijing Declaration.

The action plan provides the EU with a policy framework with five pillars of action for accelerating progress towards meeting international commitments. It makes the promotion of gender equality a priority of all external policies and actions; offers a roadmap for working together with stakeholders at national, regional, and multilateral levels; steps up action in strategic thematic areas; calls for the institutions to lead by example; and ensures the transparency of the results. In parallel, the EU Gender Equality Strategy focuses on actions within the EU.

The action plan also supports the EU Gender Equality Strategy, which focuses on our own goal. For instance, in DG Competition, we have improved the gender parity: as of April 1, 2021, female representation in middle management is 48 percent, while the corresponding figure for senior management is 38 percent.

3. The Canadian government developed a “Gender Based Analysis (Plus)” framework used by the Council of Europe in some instances, and spurring workshops and study at the OECD. Does the European Commission apply any such structured lens or have plans to do so? Do you think that such a lens can be valuable in the antitrust or broader digital context?

Gender equality is a fundamental right and key principle of the European Pillar of Social Rights. Our EU Gender Equality Strategy presents policy objectives and actions to make significant progress by 2025 towards a gender-equal Europe. It sets gender equality as a crosscutting priority. The key objectives behind the policy are: ending gender-based violence, challenging gender stereotypes, closing gender gaps in the labor market, achieving equal participation across different sectors of the economy, addressing the gender pay and pension gaps, closing the gender care gap, and last but not least, achieving gender balance in decision-making and in politics.

The strategy targets measures to achieve gender equality, combined with strengthened gender mainstreaming. That means systematically including a gender perspective in all stages of policy design in all EU policy areas, internal and external.

In the digital context, I would like to mention the 2020 Women in Digital Scoreboard. It monitors women's participation in the digital economy. It assesses Member States' performance in the areas of Internet use, Internet user skills as well as specialist skills and employment based on 12 indicators.

Women's contribution to Europe's digital economy is crucial. Women have spearheaded innovation essential to the advancement of digital technology, from computer algorithms to programming.

Yet, they are still far less likely to have specialist digital skills and work in this field compared to men. The scoreboard shows that only 18 percent of information and communications technology specialists in the EU are women. Therefore, we still have to a lot to do to ensure that women can seize the opportunities they rightly deserve.

4. Antitrust is evidence and data driven – and that evidence is increasingly tied to data science. But numerous studies and scholars indicate that much data and data science is not particularly inclusive: from women not being represented in data,² to algorithms that have racial, gender, and other biases incorporated,³ to the way data categorization and structure can create assumptions of white, male defaults,⁴ and how data visualization can shape opinions and perceptions⁵ – including those of enforcers, fact finders, decision makers, legislators, regulators. Is there a role that the European Commission can play in contributing to inclusivity of the evidence used in competition investigations and policy?

Yes. Studies show that data is often based on existing biases and then fed into Artificial Intelligence (“AI”). Since machine-learning systems often train their models on data that reflects real-world bias, there is a real concern that the extensive use of AI based on such data input will maintain stereotypes. We have to be aware of these pitfalls in our policy and enforcement.

So, when designing or interpreting market investigations we need to consider whether gender or other factors affect prices and consumer purchasing decisions.

The aim is to try to understand how gender or other aspects of identity influence demand substitutability. In some circumstances, these preferences may be strong enough to require the definition of a separate market for gendered products. We know that men and women have different preferences, price-sensitivities and propensities to switch products. This means that depending on gender, certain products could be either complementary or substitutable.

By ensuring that we are not biased in our surveys or market investigations, we not only ensure that we define markets correctly but also draw the right conclusions about competition in those markets, including market power and effect on competition. Dividing markets based on gender is not new and something we have already done in past merger cases (*Unilever/Sara Lee*).

But there can be scope for competition authorities when selecting and prioritizing antitrust cases or sectors to consider inequality. This applies to gender inequality, to discrimination, but also to small business development, innovation, and environmental sustainability.

2 See, e.g. Carolina Criado Perez, *Invisible Women: Data Bias in a World Designed for Men* (2019); Melinda Gates, *Moment of Lift: How Empowering Women Changes the World* (2019).

3 See, e.g. Cathy O’Neill, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (2016); Ruha Benjamin, *Race After Technology: Abolitionist Tools for the New Jim Code* (2019); Meredith Broussard, *Artificial Unintelligence: How Computers Misunderstand the World* (2018).

4 Safiya Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism* (2018).

5 Catherine D’Ignazio & Lauren Klein, *Data Feminism* (2020).

5. **Switching to more competition specifics, study of inclusive antitrust to date has identified several areas where competition enforcement, theory, and policy may have an impact on areas such as gender and racial equity.⁶ For example, enforcers could prioritize enforcement or market studies in areas that would have a greater impact on underrepresented populations (women, minorities, immigrants, etc.); antitrust theory could better understand the role of gender and other characteristics in product market definition, policies could be tested for disparate impact. What do you think are some promising avenues or actions for building inclusive competition policy over the next several years? Do you see specific areas of competition policy-making that can benefit from a more inclusive approach to competition?**

There is an interesting ongoing OECD project that looks into these issues. In particular, I am curious to understand if a more effective competition policy could help address gender inequality and if a “gender lens” could allow enforcers to identify additional relevant market features and consumer behavior.

It seems that a lack of diversity in management boards is linked to higher risks of collusion. It would be good to establish whether this correlation is also a causation. If so, gender quotas in management boards might actually decrease collusion in companies, to the benefit both of women and of society at large.

These discussions are also ongoing at the national level on markets that are important for minorities and women. We have to further study these issues before jumping to conclusions. Awareness and exchange of best practices to ensure that we are not biased in our enforcement actions is very important.

6. **Are there ways that competition enforcement can help address economic, social, racial, or other disparities while maintaining other competition priorities including quality, cost, and consumer/competition focus?**

The two goals are complementary, not mutually exclusive. Sustainable and inclusive growth provides better opportunities for everyone. Therefore, by enforcing competition law, we help address economic, social, and racial disparities.

In particular, competition law enforcement stimulates companies to invest, to be innovative, to reduce their costs, and to deliver quality services and products for all consumers and businesses at competitive prices. It does so by safeguarding the conditions for companies to develop, grow, and compete fairly. This improves living standards and protects consumers’ purchasing power.

Also, the EU State aid control is a part of EU competition law enforcement. It aims at avoiding subsidy races between the Member States. By ensuring that private investments and related job creation are not crowded out, State aid control reduces the burden on taxpayers and ensures that public resources are used to the full benefit of society.

As mentioned earlier, we see our initiative on collective bargaining for certain solo self-employed as directly contributing to greater equity.

7. **Do antitrust regulators need to consider the specific effects of market power and market distortion on women and other marginalized communities?**

It is important to bear in mind that markets are not always efficient. This may lead to higher prices or less innovation and choice for certain customer groups. However, our rules are already flexible enough to consider this in our enforcement.

What is important is that we are aware of potential biases and ask the right questions on consumer demand in our investigations. Therefore, when we collect data to define the relevant markets, we should consider possible submarkets and if appropriate, identify distinct product markets for women or marginalized communities.

Based on those market definitions we can then consider and address the impact on competition in those relevant markets, including market power and possible distortions.

⁶ Gender and Competition, OECD Global Forum on Competition, Aug. 11, 2020 at [https://one.oecd.org/document/DAF/COMP/GF\(2018\)19/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)19/en/pdf); Estefania Santacreu-Vasut & Chris Pike, Competition Policy and Gender, OECD Global Forum on Competition, Nov. 6, 2018 at [https://one.oecd.org/document/DAF/COMP/GF\(2018\)4/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)4/en/pdf).

8. Some have argued that market consolidation and monopolization have an outsized impact on gender, racial, and social inequality. Would you agree, or is the issue worth further study?

Several studies have indicated that this might be the case. More evidence and research will help us better frame these issues. In any event, our enforcement actions are already contributing to inclusion: There is increasing evidence that greater competition or more evenly balanced market power play a role in reducing some of the causes of inequality. For example, companies with market power have an interest in defending their position and are slower in bringing new products and services to the market. They are more likely to shed employment rather than create it, and this could raise inequality if employment cuts are disproportionately targeted at certain groups.

Higher prices charged to customers resulting from abusive conduct or cartels will disproportionately harm the poor: They pay proportionally more of their disposable income for goods and services, without receiving any benefits from the increased profits of the companies, unless they happen to own any shares in these companies, which is unlikely.

9. What do you think are the biggest impediments to more inclusive antitrust in the coming years? What are the greatest opportunities?

I believe that there are only opportunities going forward. The more we learn, the more we discuss and raise the issue, the better we will become in considering such issues in our enforcement actions.

The ongoing work at the OECD will generate new evidence to inform the debate and help us to develop better guidance on how to develop a more inclusive competition policy. This conversation is still at an early stage, and we are keen to follow it and give our contribution.

10. There has been much discussion over the past few years about antitrust divergence, particular between the U.S. and Europe. Do you think inclusive antitrust presents an opportunity for collaborative exploration, particularly given the work being done by the OECD and the new U.S. administration's focus on diversity and inclusion across all policy areas – including antitrust and digital policy?

We have longstanding excellent cooperation between the European Commission and the U.S. enforcement agencies, such as the Department of Justice and the Federal Trade Commission (“FTC”).

Over recent months, we have witnessed strong and encouraging signs of transatlantic alignment in enforcement. As regards the specific issue of inclusiveness, I note that Rebecca Kelly Slaughter, Acting Chair of the FTC, has already spoken about the importance of diversity and inclusion and commented on the research carried out by the OECD in this regard.

So, I am looking forward to working even closer with our U.S. partners on these issues.

11. In the area of sustainability and antitrust, some of the discussion revolves around coordination, and when actors may coordinate to achieve significant sustainability aims (such as coordinating with competitors on carbon emissions targets). Do you foresee a similar discussion around corporations coordinating on gender or other inclusivity targets to make a measurable impact on diversity and inclusion – particularly in light of the disproportionate impact the COVID-19 pandemic has had on women and minorities?

For both sustainability and gender issues, certainly other policy instruments and laws pursue such objectives in a more direct manner. For example, in the EU, the Green Deal seeks to ensure a green transition that is just and all-inclusive. To make this happen, it envisages an ambitious legislative package and significant investments from both the EU and its Member States, as well as the private sector. For our part, we are taking a careful look at existing antitrust rules to ensure that they are not standing in the way of – for example – procompetitive cooperation in new and innovative green technologies.

On gender and other inclusivity targets, I think that there are more direct ways for government to address these issues than competition policy.

12. Are there areas that you are particularly interested in seeing more research and examination on this topic of inclusive antitrust? Which areas?

Our work on collective bargaining aims at bringing concrete improvements by clarifying the applicability of EU competition law for collective bargaining by genuine self-employed that are considered undertakings.

Some research avenues identified by the OECD are also very interesting.

On cartels, despite the prominence given in economic literature and in legal criteria and analysis to the incentives of firms to collude, cartels are clearly negotiated and agreed by individuals. Available sociologic literature indicates that each person has personal traits and characteristics that are shaped by a range of factors, including their gender. Research is ongoing on whether gender plays a role in individuals' propensity to cartelize and whether potential causal links can be identified between the persistence of cartels and a lack of diversity in corporate boards and senior management.

On the impact of gender in market analysis, men and women apparently have different preferences, price-sensitivities, and propensities to switch. In practice this means that, depending on gender, certain products could be either complementary or substitutable. The research highlights that caution should be observed when defining markets for homogenous but highly-gendered products (for example, wet shave razors). A higher level of concentration in one of the gender-based segments may indeed increase the risk of gendered price discrimination, also known as "Pink Taxes."

13. We've focused mainly on how competition enforcement and policy can benefit social equity. Taking the flip side, is there an argument to be made that competition benefits when we work towards a level playing field for women and minorities in society? How?

Compared to men, women exhibit lower labor force participation rates, earn lower wages per hour, and are twice as likely to work in the informal sector. Recent estimates suggest that these disparities result in an aggregate loss of 16 percent of global income and on an individual level result in women losing USD 24,000 over the course of their lifetime.

It means that women have less purchasing power in the marketplace, and this is aggravated by the fact that they often pay higher prices for products structured around gender identity – the "pink taxes" I already mentioned.

By its very nature, active and effective competition law enforcement will tackle anticompetitive rents or behavior and their effects on consumer welfare. As to whether competition will benefit when we work towards a level playing field for women and minorities in society, I think this is an interesting academic question, but with limited relevance for competition enforcers. But for me it would be a happy by-product, not the main reason for us to achieve a level playing field for women and minorities. That goal deserves our best efforts in its own right. So that competition will benefit from a more equal and just society.



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