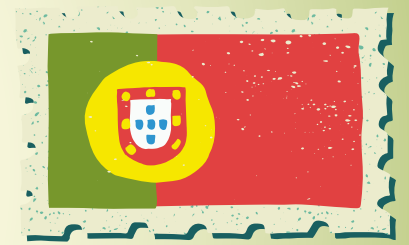
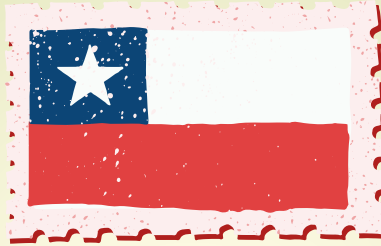


CPI PRESENTS

NCA Voices



CPI

NCA Voices

National authorities are at the coalface of competition law enforcement around the world.

This collection of **video-interviews**, recorded by CPI from July through November 2021, spans the globe. It features the voices of the heads of National Competition Authorities (“NCAs”) in a cross-section of jurisdictions, namely Australia, Belgium, Brazil, Chile, Colombia, Egypt, Germany, Greece, Mexico, Portugal, Spain, and the UK.

Each NCA clearly faces its own unique challenges. However, there are transversal themes that face every national authority. Specifically, all must deal with the new questions raised by the modern technology-driven platform economy, and the

particular challenges raised by the global pandemic over the past couple of years.

Leaving these global economic trends aside, if there is one key theme to this set of talks, it is that authorities are institutions, and institutions are composed of people. It is vital to hear the voices of those people who in fact do the real work of competition enforcement and policymaking.

By doing so, we can begin to understand their efforts, and to learn from their collective experiences. Hopefully, by listening to these voices, we can gain some insight into the past, present, and future of antitrust enforcement in practice.

Participants:



Ricardo RIESCO | National Economic Prosecutor of Chile's Competition Authority



Margarida MATOS ROSA | Portuguese ADC President



Andreas MUNDT | Head of the German Bundeskartellamt



Jonathan SCOTT | Chair of the UK CMA



Mahmoud MONTAZ | Chair of the Egyptian Competition Authority



Cani FERNÁNDEZ | President of the Spanish Competition Authority



Andrés BARRETO | Superintendent of the Colombian Competition Authority



Ioannis LIANOS | President of the Hellenic Competition Commission



Rod SIMS | Chair of the ACCC



Alejandra PALACIOS PREITO | Chairwoman of the Mexican Federal Economic Competition Commission



Jacques STEENBERGEN | President of the Belgian Competition Authority



Alexandre CORDEIRO MACEDO | President of Brazil's Administrative Council for Economic Defense (CADE)

COVID-19: Keeping the Lights On

In all of these talks, the elephant in the room, of course, is the global COVID-19 pandemic. Thankfully, NCAs have approached the crisis with admirable pragmatism, both on an operational and a substantive level. What is remarkable from the NCA heads' descriptions is the consistency of their authorities' approaches, the degree of coordination and cooperation between them, and the usefulness of international mechanisms to facilitate this united response.

On the operational front, NCAs had to act quickly to ensure the continuity of their functions. Unlike other public authorities, NCAs cannot simply shut down temporarily. Despite the pandemic, the economy lumbers on, albeit in vastly changed circumstances. NCAs had no choice but to adopt a war footing to keep the lights on during this unprecedented crisis.



"The first lesson I would say is stick always to the law. You may interpret the law more or less broadly, of course, but the institution can only do what the law allows it to do. So if you think that the institution should be granted more powers [to do more]; then the law is insufficient or outdated."



Ricardo Riesco, National Economic Prosecutor of Chile's Competition Authority

In a sense, the pandemic was an ill wind in terms of building out authorities' IT infrastructures. Necessity is the mother of invention: Many developments that might otherwise have waited long to be implemented were put in place in short order. Remote working had to be scaled up dramatically. Authorities scrambled to develop skeleton



"As a competition agency, you can never shut down as other authorities, maybe because we have to do our merger work. It's coming in. We have to do work on it. So what we have learned in first place was, we can work from home. We can work digitally."



Andreas Mundt, Head of the German Bundeskartellamt.

To achieve this, authorities undertook unprecedented efforts in record time to deploy the necessary teleworking procedures for their staff. The pandemic provided a useful proof of concept: A hybrid remote/local working model is very possible and practicable. Most NCAs do not report a significant dip in their output over this period, despite the circumstances.



"[T]he achievement for us is basically making markets work. So making sure that markets are working properly, competitively, this is the main aim."



Mahmoud Momtaz, Chair of the Egyptian Competition Authority

In addition, it is reassuring to learn of the degree of cooperation and collaboration between national authorities. On both a regional and worldwide level, NCAs shared their experiences in this trying time, and learned from each others' successes and challenges. The insights discussed in these talks would be of value in the context of any future crisis response.



"[T]hat work in the OECD, the ICN, learning from fellow colleagues, ... signing as many MOUs as we can with other authorities ... is the ... best approach in the international arena."



Andrés Barreto, Superintendent of the Colombian Competition Authority

In short, these talks provide fascinating insight into the development and evolution of institutions in the midst of an unforeseen scenario. Crucially, this insight comes from the perspective of those who in fact instigated and implemented these measures.

COVID-19: Keeping the Lights On

On the substantive front, one of the key issues NCAs have had to face during the pandemic was how to deal with potential supply shortages across various sectors. This obviously includes essential goods such as medications, PPE and other emergency materials. But it also concerns retail distribution, including the supply of consumer goods, such as food, beverages, and personal care products, to name but a few.

NCAs had to nimbly balance security of supply against their core function of maintaining effective competition. In a display of flexibility, NCAs even in some cases allowed

cooperation between financial institutions to ensure that firms at risk received credit. This involved permitting certain degrees of cooperation between competitors, to a degree that arguably may not have been justifiable under normal circumstances.

Of course, across all jurisdictions, a key consideration was to ringfence such cooperation to what was strictly necessary to address supply conditions, as justified by the unusual situation at hand. Again, reassuringly, NCAs made best efforts to coordinate their efforts and exchange best practices to ensure this. Encouragingly, NCAs sought to do so both through bilateral contacts and through international fora such as the ECN, the ICN and the OECD.

As Alexandre Cordeiro Macedo, the President of Brazil's CADE, recounts, his authority relied on international recommendations from the OECD and the ICN to decide whether or not to authorize collaboration among a group of rival companies as a measure to minimize the effects of the crisis in retail consumer goods. This is a prime example of the international competition community leveraging its strengths to reach optimal solutions.



"[T]o minimize the effects of the crisis in ... consumer goods, such as beverages, food, and personal care products ... [we] relied on international recommendations from the OECD and the ICN."



Alexandre Cordeiro Macedo, President of Brazil's Administrative Council for Economic Defense (CADE)

We are still in the throes of the pandemic, so it is too early to assess the overall success of these efforts. Even so, early signs are encouraging, and it seems that these links

between NCAs, if anything, have been enhanced by the response to the crisis.

The talks reproduced here see enforcers relate their experiences of dealing with these issues in real time. Specifically, these materials describe, from a first-hand perspective, the dilemmas faced, the solutions adopted, and the instruments and policies ultimately used. As such, these talks provide a useful insight into the development of policy and practice in a rapidly-changing and unprecedented environment. These insights may prove useful should an individual authority (or the world) have to deal with such upheaval again.

Digital Markets: The Challenge of the Century

The pandemic has revealed (as if further proof were needed) how reliant the world has become on digital technologies. Even before the pandemic, the hot issue for enforcers and legislators was the regulation of digital platforms in their various facets. COVID-19 could well prove to be the catalyst for further and faster reform at the national level.



“Clearly the focus on ex-ante regulation in relation to the digital platforms, big tech is fundamental. That’s going to be a huge focus of ours”



Rod Sims, Chair of the ACCC

As reflected in these talks, NCA heads without exception have their eyes on digital markets. But not only digital markets in the narrow sense: Digitization is a trend that suffuses every market, and defines how businesses and consumers interact with every aspect of the economy. This ranges from finance to electric vehicle charging, from real estate to childcare, from taxi hailing to grocery delivery.

It is therefore interesting that many NCA heads ask what “digital markets” even are. All markets are becoming increasingly digital, and this shows no signs of abating. That said, as Jacques Steenbergen of the Belgian Competition Authority notes, “[t]he problems are diverse, are not limited to the digital giants, but the digital giants manifestly present a specific challenge.”



“[A]lmost everything is going digital. So like some of my colleagues, I’m not very comfortable with focusing only on the digital sector. What is the digital sector? Is it a sector that provides digital services? That is already, or has become a very large sector with the very large players everybody always talks about, but we should not forget that there are also others, and this is not new.”



Jacques Steenbergen, President of the Belgian Competition Authority

NCAs are grappling with this broader trend in terms of how they gather evidence, how they analyse parameters of competition, and in how core competition law concepts should be interpreted and applied. As Johnathan Scott of the UK CMA surmises, there is a need for a “tailored regime, which will reflect where market power actually exists and is fact-based rather than theory-based.” Finding this careful balance between theory and reality will be the combined challenge of legislatures and enforcement agencies, as this new body of regulation develops.



“I like to look at technology, and in particular digital, as a feature of many sectors. It’s a feature that has become present in most sectors, if not all, and it has changed business models along with people’s way of living, as I mentioned, including and even more so during the pandemic.”



Margarida Matos Rosa, Portuguese ADC
President

Moreover, it seems to be common ground that ex ante platform regulation is coming. NCAs in most cases have been intimately involved in articulating this regulation, and will likely have a key role in its enforcement.

The extent of this continued participation, and how the new rules will impact competition enforcement remains to be seen. But a universal theme that has been voiced by participants in this series of talks is that any ex ante regulation and competition rules must be implemented in a consistent and coherent manner.

Conclusion: Looking to the Future

As to the future, NCA heads identified some obvious core trends that apply to us all: The rise of tech, the importance of balancing sustainability with economic competition, and the dangers of growing economic concentration. This set of trends seems almost obvious, but the key challenge over coming years will be how to strike the correct balance between restraint and enforcement against this multivariate background.



“[E]very year we produce our annual plan and we do try [to] use that as an opportunity to stand back, raise our heads above the parapet, and actually think about what we think are the emerging issues.”



Jonathan Scott, Chair of the UK CMA

A recurrent theme is the impression that in years to come, enforcement activity is likely to, if anything, increase. The tech sector will be one target of enforcement, but finance, healthcare, pharmaceuticals, and labor markets also consistently rear their heads. That said, each country has specific enforcement priorities, depending on the sectors of concern in its particular economy. NCA heads articulate on likely trends in their respective jurisdictions in this set of talks, and it would be premature to draw out general trends, beyond the obvious.



“[T]his is the result also of the synergies of being a regulator. and also an antitrust authority because we can both from a regulatory point of view, pay attention to distortions in the market

in regulated sectors but also try to combat that from a competition point of view.”



Cani Fernández, President of the Spanish Competition Authority

Nonetheless, whatever the case may be in individual jurisdictions, the broad trend is that governments are investing in staffing authorities, in the development of AI, and in exploring other technologies to enhance antitrust enforcement capacity. Governments are emphasizing competition as a policy focus in public. Competition is back on the agenda, and NCA heads are aware of the political stakes at issue.



“[I]t’s quite important to think more carefully about the way technology could be integrated in our proceedings, and in particular AI. This is really the most important challenge we will have, and that’s why we have been very supportive and of the development of this new work, and new research on competition law and economics.”



Ioannis Lianos, President of the Hellenic Competition

This gels with another recurrent theme among NCA heads: their desire to foster an ethos of competition amongst the general public. It is apparent from these talks that NCAs -- as a general rule -- view it as part of their core mission to advocate to the public the virtues of competition as a civic good.



“[There are] three world issues ... climate change, inequality and how big companies will modify the way we live, consume, [and] everything we do. And antitrust policy is right there in the middle. So it’s really interesting to be part of it.”



Alejandra Palacios Preto, Chairwoman of the Mexican Federal Economic Competition Commission

Similarly, NCA heads question whether current legal standards (internationally and in their respective jurisdictions) may be miscalibrated. Specifically, certain NCA heads query whether the bar is set too high to prove certain types of abusive anticompetitive conduct. Might we see a recorection over coming years, either via the practice of authorities, legislation, or the jurisprudence of national courts?

In conclusion, this set of talks provides a snapshot of current thinking among competition law enforcers at the national level. We hope that this collection of NCA heads’ voices provides a useful compendium of insight for anyone interested in competition policy.

Listen well. As Italo Calvino wrote, “it is not the voice that commands the story; it is the ear.”

To watch all the video recordings go [HERE](#).

PARTICIPATING CHAIRPERSONS SHORT BIO



Ricardo RIESCO

The National Economic Prosecutor is lawyer Ricardo Riesco E., who was appointed to the position by the President of the Republic, Sebastián Piñera, after the contest carried out by the Civil Service. The National Economic Prosecutor is a lawyer of the Pontificia Universidad Católica de Chile (1994-1998), where he was graduated with maximum distinction. He has a Master in Law from Columbia University (2004-2005), US, where he also served as visiting professor between 2017 and 2018. Mr. Riesco has specialized in competition, litigation and arbitration, holding high positions in law firms in Chile (Claro y Cía, Eyzaguirre & Cía., Philippi Yrarrázabal Pulido & Brunner Abogados and Philippi Prietocarrizosa Ferrero DU & Uría Abogados) and in the United States (Clifford Chance).

In addition, he has worked as an academic at Chilean universities and has written and collaborated in the writing of legal articles in Chile, Spain, the US, and Ecuador. As an expert, he has also given lectures in Chile, Peru, and Brazil. Ricardo Riesco is the eighth lawyer to occupy the position of National Economic Prosecutor. He succeeds Felipe Irrázabal Ph., who led the institution from 2010 to 2018.



Andreas MUNDT

Andreas Mundt studied law in Bonn as well as in Lausanne and Geneva in Switzerland. In 1985 and 1990 he passed the state examinations. In 1991, Mundt worked at the Federal Ministry of Economics in Bonn, where he was given civil service status, as a consultant for questions relating to the integration of the new federal states. In 1992 he became Speaker fraction of the FDP - Bundestag faction. Mundt was for social and labor market policy responsible and until 1999 worked as an employee of the FDP deputy Gisela Babel, who at that time headed the responsible working group.

From 2000, Mundt became active in the Federal Cartel Office, whose headquarters had been relocated to Bonn on October 1, 1999. There he held various positions, including becoming head of the "International Competition Issues" department in 2001 and head of the policy department in 2005. At the end of 2009 he was appointed President of the Federal Cartel Office to succeed Bernhard Heitzer.



Mahmoud MOMTAZ

Dr. Mahmoud Momtaz is the Chairman of the Egyptian Competition Authority (ECA) as of January 2021, he currently serves as a board member at the Gas Regulatory Authority, the Supreme Council for Media Regulation, as well as a member at the Advisory Committee of Anti-Dumping, Subsidy and Safeguard. Prior to assuming his position at ECA, Dr. Momtaz served as Private Sector Development Specialist at the World Bank's headquarters in Washington D.C. During that period, he worked on several competition policy projects as well as private sector development in the MENA region and Southeast Asia.

On the regional and international level, Dr. Momtaz has actively participated in the reformulation of the competition laws and enforcement regimes in a number of Middle Eastern countries and conducted several trainings to numerous stakeholders therein.

On the academic front, Dr. Momtaz lectures Competition Law & Economics at both Hamburg University - Germany and Cairo University, Egypt.



Andrés BARRETO

Andrés Barreto González has been the Superintendent of the SIC (Colombian antitrust authority) since September, 2018.

Prior to working for the SIC, He also worked as legal advisor for the youth program at the Presidency, and for the Bogotá's Mayor's Office as the Director of International Relations. He also spent a number of years working at the Ministry of Foreign Affairs, where he was legal advisor, Deputy Director of Legal Affairs and Deputy Director of Protocol.



Rod SIMS

Rod Sims was appointed Chair of the Australian Competition and Consumer Commission (ACCC) in August 2011 for an initial five-year term, reappointed for a further three years in August 2016, and reappointed again for a further three years until July 2022, making him the longest serving Chair of the ACCC. Rod has extensive business and public sector experience. Immediately prior to his appointment to the ACCC, he was the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales (IPART), Commissioner on the National Competition Council, Chairman of InfraCo Asia, Director of Ingeus Limited, and a member of the Research and Policy Council of the Committee for Economic Development of Australia. Rod was also a Director of Port Jackson Partners Limited, where he advised the CEOs and boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished all of these roles on becoming Chair of the ACCC.



Jackes STEENBERGEN

Prof. Dr. Jacques Steenbergen (born in Antwerp (Belgium) in 1949) is since its establishment as an independent authority in 2013 president of the Belgian Competition Authority. He was from 2007 to 2008 director general of the directorate general for competition in the Belgian ministry of economic affairs. He teaches competition law at the University of Leuven since 1979. Before joining the competition authority, he was partner in the Brussels office of Allen & Overy, and he has been legal secretary to the President of the Court of Justice under the presidency of Prof. J. Mertens de Wilmars. He is also member of the Bureau of the OECD Competition Committee, member of the board of editors of the Dutch-Belgian European law review SEW, member of the scientific committee of the law review Concurrances, member of the Board of the Stichting van het Koninklijk Conservatorium of Brussels (the foundation of the royal academy for music of Brussels), and honorary member of the Bar of Brussels (Nederlandse Orde van Advocaten bij de Balie te Brussel). He is a former member of the Brussels and Flemish Bar Councils. He obtained a PhD at the KU Leuven with prof. dr. W. van Gerven on legal remedies and ailing industries (1978). He holds a masters degree in law from the KU Leuven (1972), and bachelor degrees or equivalent certificates in law, philosophy and economics from the University of Antwerp (UFSIA)(1969).

PARTICIPATING CHAIRPERSONS SHORT BIO



Margarida MATOS ROSA

Margarida Matos Rosa is the President of the Portuguese Competition Authority (AdC), having taken office on 28 November 2016.

Since 2011, Ms. Matos Rosa was Director of the Collective Investment Management Supervision Department of the Portuguese Securities Market Commission (CMVM). Previously, she was advisor to the Board of the CMVM with a focus on the areas of systemic risk, asset management and international securities regulation.

Between 1998 and 2006, Ms. Matos Rosa worked at BNP Paribas, having been responsible for the development of the institutional asset management business of the group in Portugal. Her professional experience in the financial sector also includes positions at UBS Bank and Santander Bank. In 2007, as a Fulbright scholar, Ms. Matos Rosa carried out research in public policy in the venture capital industry at the Massachusetts Institute of Technology (MIT), in the United States.



Jonathan SCOTT

Jonathan was appointed Non-Executive Director of the Competition and Markets Authority (CMA) Board on October 1, 2016, and as Chair on October 9, 2020.

He is also a Non-Executive member of the Press and Assessment Board of the University of Cambridge, the Chairman of Governors of The Perse School in Cambridge and the Chairman of The Remuneration Committee of St Catharine's College Cambridge.

Earlier in his career, he also set up the Brussels office of Herbert Smith and subsequently led the competition group there for 12 years.

He was also a Senior Partner and Chair of Herbert Smith, and post-merger, Herbert Smith Freehills, a leading global law firm. He led the firm's European Union and Competition practice until 2007 and chaired the firm's Global Partnership Council, where he was responsible for management and strategic decisions since 2010. He retired as Chair and partner in 2015.



Cani FERNÁNDEZ

Cani Fernández is the President of the Spanish Competition Authority (Comisión Nacional de los Mercados y la Competencia, or CNMC) since June 2020.

For more than 30 years (from 1987 to 2020), she worked as a lawyer in private practice specialized in EU and Competition Law. Likewise, she has been associate professor at different academic institutions such as the Toulouse School of Economics, McGeorge University of the Pacific, Universidad Carlos III, Universidad Autónoma de Barcelona and the Barcelona Graduate School of Economics, among others. From 1993 to 1997 she was référendaire at the Court of Justice of the European Union.

She was the first woman to be appointed as Co-Chair of the Antitrust Committee of the International Bar Association (IBA). In addition, she held the position of Vice-chair of the Economics Committee of the Antitrust Section at the American Bar Association (ABA), Officer of the International Cartel Task Force of the ABA Antitrust Section, and member of the IBA LPD Council. She was also a Non-Governmental Advisor (NGA) of the EU Commission and the CNMC before the International Competition Network (ICN).



Ioannis LIANOS

Ioannis Lianos is Professor, Chair of Global Competition Law and Public Policy at the Faculty of Laws, University College London, on leave to serve as the President of the Hellenic Competition Commission since September 2019. He was elected member of the Board of the Competition Committee at the OECD in December 2020. He is the founding director of the Centre for Law, Economics and Society (CLES) at UCL Laws and served as the executive director of the Jevons Institute of Competition Law & Economics at UCL. He is also a fellow of the European Institute at UCL. He was previously the Vincent Wright chair at Sciences Po Paris between 2018-2019 as well as the Chief Researcher of the Skolkovo Laboratory on Law and Development, National Research University, Higher School of Economics and academic head of the BRICS Competition Law Project (2014-2019). He has also held an Alexander von Humboldt fellowship at the WZB (Social Science Research centre) in Berlin from 2014-2016.



Alejandra PALACIOS PRIETO

Alejandra Palacios Prieto is the President of Mexico's Federal Commission for Economic Competition (Comisión Federal de Competencia Económica, COFECE). She was named by the Senate of the Republic following the constitutional reforms in telecommunications and economic competition in 2013, re-elected in 2017 for a second term, which is to end in September 2021. She is the first woman to ever lead Mexico's competition authority. Before taking this role she was the Director for Project Regulation and Good Governance at the Mexican Institute for Competitiveness (IMCO), where she developed the research agenda on the issues of economic competition, particularly in terms of subjects related to economic regulation, telecommunications, and public contracts. Since June 2016 she's been the Vice President of the International Competition Network, an organization that includes 130 national competition regulators. She is also a member of the OECD's Competition Committee Bureau, as well as part of the Mexico chapter of the International Women's Forum.



Alexandre CORDEIRO MACEDO

General Superintendent Alexandre Cordeiro Macedo has a master's degree in Constitutional Law from the Instituto Brasileiro de Direito Público and a postgraduate degree in Disciplinary Administrative Proceedings from the University of Brasília. He graduated in Law from the Instituto de Educação Superior de Brasília and in Economics from the Brasília University Center – UNICEUB. Since 2006, he has been an Auditor of the Office of the Comptroller General (CGU), where he has also worked as adviser and chief of staff. He also worked as Vice-Minister of the Ministry of Cities, between 2012 and 2013. He is a professor of Competition Law and Law and Economics of the Escola de Direito de Brasília – IDP. He is a visiting professor at the Universidade do Vale do Rio dos Sinos – UNISINOS in the LLM of Business Law. He also is a visiting professor at the Faculdade de Direito de Vitória – FDV in the LLM of Compliance, Anticorruption Law and Public Administration.

