

Antitrust Chit Chat

By Alejandra Palacios



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For some months now, we've been hearing about the so-called demise of competition law, particularly in terms of its technocratic application by independent authorities. There's a growing discourse about how antitrust agencies will need to connect their competition policy to a broader context in one way or another — be it national industrial policy, geopolitics, or the priorities of the current government (see my article with Assimakis Komninos on this subject²).

As these discussions unfold, some commentators argue that it's incorrect to suggest antitrust has never been political or that agencies were ever fully independent. It's true that antitrust enforcement is inherently discretionary and selective: decisions on which sectors to investigate, how to allocate agency resources, and the actions taken by

agencies do have political consequences. Moreover, it's not just that competition enforcers are facing political calls for more economic pragmatism in their work, such as helping companies to scale up, protecting national champions, or ensuring companies can cooperate if needed (the sustainability argument) through antitrust immunity. One real concern is the uncertainty this politicization of competition policy could bring if your case gets caught up in political debate.

For example, some U.S. commentators have suggested that antitrust policy may become not only more discretionary in choosing winners and losers, but also more transactional, potentially involving direct discussions with the Head of State rather than agency-level decision-making.³ In the *Meta* case that started a few weeks ago, it seems that the FTC is targeting the company not solely due to its size, but also for concerns related to free speech.

¹ External counsel at Cuatrecasas, former Chair of Mexico's Antitrust Agency (COFECE) (2014 - 2021). The views presented in this op-ed are strictly personal.

² The 'end of competition law'?, Competition Law International, International Bar Association, December 2024.

³ For example, opinions of William Kovacic, Eleanor Fox and Herbert Hovenkamp in an interview with Oles Andriychuk on U.S. Antitrust Law Under the New Administration, available at <https://www.youtube.com/watch?v=jTs8vivI6r8>.

Another example is the discussion around the intersection of antitrust law and tariffs. Normally, these issues seem quite separate, intersecting mainly because of: (1) the impact of tariffs for market definition purposes, as imposing tariffs potentially reduces the competitive significance of international rivals in the domestic market – I recall participating in an enforcers panel where we discussed the positive effects of free trade on local competition, highlighting how it exerts discipline on domestic prices and increases businesses' competitiveness through access to new markets or more competitive inputs; and (2) as we have seen lately, antitrust agencies have warned against interpreting tariffs as a green light for price-fixing or other unlawful behavior, as the imposition of tariffs may raise local prices opportunistically, with local businesses having the incentive (unilaterally or in coordination with competitors) to match import prices.

However, what is different this time is the conversation around how a competition authority's enforcement record could become a trade issue. Are antitrust

investigations in China against American tech companies like Google and Nvidia part of Beijing's response to a tariff war and export control policy? Or is the U.S. President's warning to the European Union about targeting U.S. tech companies impacting antitrust enforcement? Even though the European Commission has been clear that antitrust shouldn't become a "tool in trade disputes" and that potential tech fines are being handled as an entirely separate issue from trade negotiations with Washington, at a recent ABA antitrust conference, one of the issues floating around was the slow-pedal approach on potential sanctions against big tech companies for not complying with the Digital Markets Act (DMA), which were supposed to come out before that conference. Weeks later, DMA sanctions to Apple and Meta were imposed on April 23. The U.S. White House has stated that these fines "will be recognized as barriers to trade"⁴. Of course, I have no idea how much the EU, China, or the U.S. are weighing their enforcement probes and sanctions into diplomatic negotiations, but the chit-chat is there.

⁴ National Security Council spokesman Brian Hughes on U.S. White House position on the

European Union fines on two major American tech companies on April 24, 2025.



Finally, there's a growing need to consider political issues when addressing potential M&A terms and settlements. Tariffs have become another factor to negotiate as part of an M&A deal with counterparts, as markets that are open today may be closed tomorrow. As FDI screening regimes tighten, there is also the need to reframe mergers in terms of FDI considerations. Investments in infrastructure or in other key inputs apparently could be appealing when seeking merger approvals in the eyes of governments that run on tight budgets, even though merging parties might be seeking to acquire or expand their market power.

Will this chit-chat be significant enough to change antitrust enforcement as we've known it for the past 20 years? Or will we still have technocratic antitrust agencies that will generally keep enforcing antitrust as we know it, with only a few cases as exceptions? To answer these questions, we shall wait and see.