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Modernizing European Competition Policy: Dead on Arrival

By: Cristina Caffarra

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The world we live in is convulsed by the most extraordinarily far-reaching technological transformation, poised to either unmeasurably improve the human condition and create human-to-machine relations we had not thought possible since the days of *Bladerunner*, or decimate our jobs, blow up our financial markets, create major contagion and undermine our bedrock institutions (pensions and insurance), possibly all at the same time and within the next three years. We live in a world in which all we have known for the past 50 years on the merits of globalization and neoliberal trade have been totally upended, tariffs rule globally and conversations about trade "imbalances" and disparate policy responses have become the hot economic debate of the summer. We live in a world where China, which only 15 years ago was looked down on as producing at best solar panels and dishwashers, has positively achieved through planning, determination and authoritarianism a massive civilizational leap which places them ahead in most technologies globally with enormous production capacities across sectors – the true *Exportweltmeister* of our era, decimating European industry. We live in a world in which Europe has declined on all metrics of performance – productivity growth above all – and yet we are a rich continent with huge capabilities, inventiveness and skills – the top startup creator globally, failing to scale up in our mess of fragmentation, confinement to small national markets, and suffocating rules and regulations. We live in a world where unconventional war is not only "at our door," but has kicked in the window and is rampaging through the living room, with threats from multiple sides and receding protection from our historic patrons; and yet we manage to get nowhere with our own defense because of duplication, inefficiencies, inertia and more excuses. We live in a world in which we are proud Europeans but deference to EU institutions has plunged to historic lows, even under unfathomable threats from our former main ally, and there is total frustration at the way our extraordinary European superpowers are nullified by lack of agency and leadership, by institutions that fail to deliver anything resembling effective action, every single time.

In such a world, the only conceivable, permissible response

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should be the most ambitious joined-up effort to rethink and redesign the blueprint for everything. Yet we do not do that; we notoriously drown in think tanks and white papers and salons and worthy groups (the *Rhine Group* being the latest addition). The President of the Commission anointed Mario Draghi as our own "sage of Omaha" and invited everyone to enthusiastically follow his prescriptions, but then everything drowned in a morass of carved-up competences and bureaucratic treacle.

Think of one of our foundational imperatives: redeem ourselves from the position of "tech colony" and build at least part of a tech stack we can control, whose value we can capture and we can build on. Mine is the generation that lost Europe. For this generation, this *should* be a massive industrial policy project under any regime. But no – not the business of DG Grow, it's "sensitive" – anything digital is DG Connect's job. So, AI and chips were removed from the Draft Industry Accelerator Act ("because digital"), while DG Connect has been throwing some money at AI Gigafactories in a nebulous plan. Who is building, who is buying this capacity? Meanwhile any suggestion for "Buy European" mandates in digital died under pressure from hyperscalers saying it would be "against trade rules" and "against competition." Where were DG Trade and DG Comp in this brawl, defending the home team? Radio silence, heads below parapets. The spectacle of four key corners of European economic policy – Trade, Industrial Policy, Digital/Communications and Competition – not forging a *single European plan* is hard to fathom. Yet there we are.

Thus it is no surprise that the EC's effort to "modernize competition policy" as a key mission for this mandate, and one of its responses to the Draghi diagnosis, has been dragging for at least 18 months now, nowhere near completion and set to produce *no change whatsoever.*

Do we need competition reform? Well, outcomes are far from stellar. We failed to "tame" Big Tech after a generation of efforts (15 years) in which we focused on the psychedelic drug of regulation instead of building. We did not build a thing. Did we at least modify conduct, affect business models? No. Big Tech is thriving like never before. Because we thought the nature of the power that was being rolled over us was bad conduct, and we should teach some manners – but it was *infrastructure.* And we were so obsessed with "regulation will show them!" that we did not build a thing. Ah, but we did create some "good law." Let's say it like it is: every single case was a waste of time that neither benefited entrants nor changed market structures. "Competition and antitrust are small ball" – they cannot advance the mission, as it turns out. Maybe some will get follow-on damages (which have no deterrent property whatsoever, just a cost of doing business). Outside Big Tech, do we have a positive track record with reining in abuses? Well. *Intel*? Can't really name many cases.

Do we need to reform merger control? The political wing thinks so, being endlessly lobbied by industry that not being able to do *their* mergers is the reason Europe has no champions and remains subscale. And the righteous Competition Bubble thinks "bad guys, we will resist their evil consolidation at all costs. Competition alone drives innovation; we are doing God's work."

So, Guidelines! We love them. What's better for showing signs of *actual progress* than years redrafting *Guidelines!* Ah, but "we need them, the world needs them, we need *guidance."* So, we have had the Draft Guidelines on Exclusionary Abuses – in truth a process launched during the previous EC mandate in 2023, only just now adopted, in September 2026. Totally boring and conventional *déjà vu* with marginal tweaks from the 2008 version. For entertainment value we had the spectacle of the "conservative fringe" coming out of the woodwork the day before formal adoption with an "open letter" to the President of the Commission – arguing they should not be adopted and that the process should start all over again because, in a nutshell, there is too much presumption of harm in what could very well be pro-competitive conduct like tying, bundling, exclusivity. I was almost expecting to read "Type 1 / Type 2 error" and feel we are all teleported back to 2008. The *very same* stuff on the first Guidelines was debated back then, argued by the same people with the same arguments. Extraordinary – 20 years ago. And still here we are. What's wrong with *déjà vu?*

But now the centerpiece: President Von der Leyen demanded, post-Draghi, a "modernization" of competition policy, ostensibly to deal with Europe's issues, the problems of fragmentation and small scale and lack of growth. The *cognoscenti* "know" this was all a nice way of saying "European enterprise needs to consolidate, stop standing in the way" so the Bubble is there, to repel this maladroit push. "Fine, we will modernize. We will do new Guidelines." And indeed, we are all in a tizz of excitement because we have new *Draft Merger Guidelines*, and even a new *economic report on Dynamic Effects*. Indeed the ever-supportive antitrust academics cheerlead that the draft means (I paraphrase) merger control is "evolving into supporting the EU's broader economic project," giving prominence to "scale, investment, innovation, theories of benefit, the 'innovation shield,' the recognition that acquisitions can provide an important exit path for startups, and a wider discussion of efficiencies": all of this "signals the Commission is willing to consider how transactions may strengthen capabilities at and across firms, over time."

That the "global political and trade context has changed" is mentioned *once* in the introduction and while scale, consolidation and growth are mentioned a few times, the discussion has zero depth. Conversely, the usual fetish of "innovation" is everywhere, and for anyone who actually practiced mergers in the last 15 years, at the coalface, there is nothing much we have not discussed in actual cases. Theories of benefits, innovation shield, dynamic competition – all there before, in practice. What I continue to ask is: Why is this such a closed-club discussion? Why aren't there macro and trade people working together with the antitrust nerds? Why is it a process exclusively reserved to antitrust lawyers and IO economists, and no one else can get a word in edgeways?

The fundamental reason is twofold. First, "competition" is a fiefdom which the practitioners in the field have managed to characterize as wonky and technocratic, so that outside the Bubble no one cares: what competition agencies are doing is a mystery to everyone, and there is literally no interest among the general public, nor among entrepreneurs and founders and funders. Look at discussions at tech "doers" events – zero interest. Second, the field is in the hands of a small set of vested interests which are deeply entrenched and have no incentive to shift. I do not mean this just in a malignant or corrupt way. A few of the vested interests are premised on a good-faith (though in my view misguided) belief that they are intellectually and morally right, so they have reached *atarassia* (peace of mind and senses) in the certainty that what they think is the *rightful way*. But they are still vested in that they protect themselves, their reputation and that of their peer class from being questioned. These are the IO academics who 25 years ago were nowhere in antitrust but were pushed by the consultants into the field as part of the "more economic approach" – providing validation for our machinations ("I have a model we can show the agency/judge! Will be definitive evidence for the case!"). Then there are vested interests who just want to continue to make money advising on the *status quo* and for whom all intellectual effort at questioning scope and methods is an unwelcome departure – lawyers, economic consultants. And there are the regulators who do not want to question or interrogate anything either: they *seem to;* but, in reality they get status and deference from the other constituencies by validating their position, and intellectual curiosity is not encouraged. If it wasn't that European competition policy has become irrelevant to the world, this would be serious. But it has *made itself irrelevant* precisely because it has shut itself into a walled garden of the same technocracy we have peddled for 25 years.

It is remarkable that – after the major earthquakes that have shaken the political economy of antitrust, from the complete reformulation of the U.S. Brandeis movement to the decimation of antitrust enforcement in the Trump administration, from the upending of trade relationships with China, on its way to becoming an industrial and technological hegemon, to Draghi's red flags on Europe's economic model – the European competition policy juggernaut is moving *not an inch*. President Von der Leyen tasked DG Comp with "modernizing," but 18 months later we are repurposing and relabeling more or less what we have done for 20 years with marginal changes, a few performative twists and lip service to "dynamic effects." The Oxera study, the flagship for the effort, is a competent literature review by IO academics and former officials close to IO orthodoxy. But it tells us nothing we did not know; alas, it is competent but entirely predictable. Mechanisms, models: how can *any of this academic apparatus, talk about model insights, truly matter to the predicament of Europe today? To the way we should pursue competition as a tool for growth?*

The canonical answer remains (as Olivier Guersent notoriously said a few years ago) "competition policy cannot address the major economic problems of our times." We are only doing competition law here! A Guideline is a Guideline! And the usual: "Innovation is what Europe needs most, and competition is what we need to generate innovation, which is the engine for growth."

Apart from the most extreme economic advocates (we have those too), no one would deny that more competition is good for innovation. *But* the "innovation fetish" of Europe's competition bubble is a convenient truism. We continue to harp on that "we need competition to generate innovation" as if that was *the complete answer.* But then the analysis nebulously stops there. *How* do we go from "innovation" to scale, to size, to growth? It's all opaque: well, an innovation by small firms creates growth, no? *But how*? Hand waving. Europe's progressive competition academe settled a decade or so ago on a narrative which is seen as "the truth" – supported by "the models" and "the evidence." I am deeply skeptical the "insights" of most models make any sense to the real world (the intuitions are often wildly implausible). As to the empirical part, I know how "robust" most "datasets" are. Not generalizing, but a healthy dose of skepticism.

There is a lot of ideology too. "The gospel" which underpins the whole system of beliefs today in Europe goes roughly as follows:

- Innovation is all that matters and it comes all from small firms;
- Small firms don't scale because they either wait to be bought out or they are not funded by VCs in the expectation that they will be withered by Big Tech or bought out;
- Large incumbents are always bad and self-interested, and we should pay no attention whatsoever to whatever they say as they are always up to no good.

This is the conventional wisdom as adopted around 2010-15, and still represents the canonical view. None of this is evolving with the environment. If one suggests it, one is "unprincipled." Some of it may have sounded right circa 2010-15 but not anymore, yet for competition economists in the Bubble this is an immanent universal truth which is repeated in conferences and reports.

Take the argument that startups are not entering the main business of digital incumbents (search, ecommerce, social networks) because they are deterred from doing so by incumbency. The claim is then that one of the bad effects of entrenched tech monopolies is that fewer startups are created in those areas, and therefore there is less innovation. Maybe. Some of this "shadow cone" has been there, for sure. But it does not follow that Europe is behind in "innovation" mainly because of the bad tech monopolies. This may be some *part* of the answer. But the reason it is a beloved "go to" explanation is that it fits well with the prior that U.S. digital companies are the bad guys that we should blame for our lack of success. Instead of blaming *ourselves* for being so oblivious to the real roots of our problem.

It makes us feel better to argue it, but the reason we have no tech companies of our own is *not* primarily that our startups were trampled over by Big Tech. Our tech start-ups fail to scale not mainly because of the Kill Zone. We had the Kill Zone insight circa 2015: but the real Valley of Death for European firms is *lack of demand in our narrow national markets, and lack of finance*. This is the vast bulk of the reason why Europe has stalled and our start-ups go to the U.S. We can't even manage a decent unified legal regime for them (see the birth tribulations of *EU.Inc*). Yes, there may be some Big Tech "shade cone" too. But let's not tell each other the tall tale that this is the main reason we don't produce innovative scale ups. Talk to tech founders, go to their events.

Hugely more significant is that the *appetite for funding them is missing*. VCs are struggling to drive capital to European tech start-ups and scale-ups: Europe is an extraordinarily rich continent, but capital is trapped and not directed to the right places – pension funds and insurance companies are sitting on trillions in AUM ("assets under management"), but are not funding VCs to fund European tech. They are rich but enormously reluctant to direct capital to these places (while very happy to fund U.S. VCs to fund U.S. tech – even risky AI ventures). And yet when the right change happens, it has prodigious results – look at Sweden, where capital market reform has generated major support to start-ups and produced multiple unicorns. "Kill Zones" is the quaint stuff we told one another in 2015. It is clear the issue is much more fundamental. Insisting it's all the fault of Big Tech is a distraction. In the same way that continuing to insist we had to "tame" their bad conduct was a distraction from building our own stack.

The standard view that big companies, incumbents, national champions are all bad actors vying for protection and subsidies also reflects an ideological position. We have the unquestionable problem that firm size is smaller in Europe because they cannot scale in a single wide market. But the Single Market will not happen in our lifetime, then what? I am not in favor of wanton consolidation. But in strategic sectors, absolutely we need to experiment. If we don't allow for consolidation, we don't create the Single Market, we don't create a Capital Market Union *and* we don't have public investment to power up new actors, what are we doing? Of course, larger firms with more power will want to use it, but there are sectors where the need to scale is obvious: aerospace, defense, communications, digital and transport infrastructure, several industrial products . Discussions of the relationship with industrial policy in competition circles are so obsolete they are dispiriting. Where's the real thinking? The experimentation? Can we put heads together?

In the U.S., we had a big pendulum swing with the Brandeisians – not everyone's thing, but an ambitious rethink that had antimonopoly at the core of multiple policy agendas. Whatever one may think of it now (and even the protagonists of the era now agree antitrust is "small ball" and we are "After Antitrust") the Brandeis/progressive movement was a jolt that questioned the fundamental purpose and animating values of antitrust. It rethought how antitrust could contribute to economic outcomes. Europe remained resolutely inert to that intellectual shift and refused to put any effort into revisiting the thinking. Now that's over and we are in a very different political economy – for now. "Abundance" in the U.S. is another controversial narrative on the progressive side. Europe is there, a fantastic continent with capabilities and creativity and energy at grassroots levels, and yet incapable of challenge and creativity and leadership on policy, incapable of purposing its powers towards growth and ambition.

I am often asked "But what should we do? Allow consolidation?" I don't care about telco consolidation nor am I making a case for it (though I find the orthodoxy again too dogmatic on this issue). The new *Draft Merger Guidelines* are being discussed as ushering in a new era in which DG Comp will be "more open to the benefits of consolidation" – and then commentators list a bunch of cases underway which will test this proposition. But most are unconvincing: a Phase 2 on graphic paper (*UPM/Sappi*)? Of course, advocates will make the case this is a sterling test case. Graphic paper is not a strategic sector, move on.

I would love to see Europe's enormous talents deployed to work together across trade and finance and macro and digital and industrial policy – and yes competition – to really ask: What are the key industrial sectors we need to defend? What is our bottom line? What do we want their structure to be, how do we rationalize? Or, is it better to invest in multiple competing initiatives? How do we purpose procurement to favor our asset creation and investment? How do we liquify the enormous pools of capital in European institutional funders to support the massive investment we need? who needs "derisking," truly? How can we attract big private money to match public investment (if only) to build our digital infrastructure? How do we get our enterprise CEOs to invest in "Project Europe" instead of just doing dinners lobbying the President for less regulation? The narrative that "all we need is competition and innovation" is just exhausted. It is not a programme. It is not a plan. Uplifting Europe from its predicament should be something we live through, on our own skins, as an existential mission - and deserves a lot more radical thinking than tweaking guidelines.