



# Inclusive Competition Policy

## Vancouver Competition Policy Roundtable

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February 2022

# Agenda

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- A Practical Application:
  - Gender Inclusive Competition Policy
- A Generalised Framework:
  - Rawlsian Antitrust



# The Context on Gender Inequality

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The OECD's [Social Institutions and Gender Index](#) estimates that the impact of discrimination in laws, social norms and practices costs the world \$6 Trillion each year (\$1552 per capita)

Hence, **SDG5: Achieve gender equality and empower all women and girls.**

- SDG 5.1 “Whether or not legal frameworks are in place to promote, enforce and monitor gender equality and women’s empowerment.”

# Policy Response: Gender Mainstreaming

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'the process of assessing the implications for women and men of any planned action, including legislation, policies or programs in all areas and at all levels.'

UN Economic and Social Council

E.g. in Canada Gender-Based Analysis is used to identify the potential impacts of the national budget and trade agreements on women.

# What's gender got to do with competition policy?

... More than we might think

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## Competition Policy is traditionally Gender Blind

- Consumers
- Firms
- Governments
- Regulators
- Investors
- Maybe workers

...and proud of it

# Our Work: Two Propositions:

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1. A gender lens can improve the *effectiveness* of competition policy, and
2. A more *effective* competition policy can help us address gender inequality.



# More competitive markets...

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1. Lower prices on products consumed by women
2. Lower prices on services that facilitate labour market participation by women
3. Lower prices on inputs that facilitate entrepreneurship
4. Remove barriers to facilitate entrepreneurship
5. Strengthen the business case for women on boards
6. Increase wages to women workers by reducing scope for discrimination
7. Prevent wage reductions for women workers that occur when monopsony market power is created (or abused)
8. Increase wages for women workers by removing barriers to switching job

# Prop. 1: More *effective* competition policy can help us address gender inequality

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1. It can lower prices on products consumed by women
  - Evidence: The 'Pink Tax' added up to \$1,351 per woman each year in California in 1996 (\$2,421 in 2022), a 7% price difference in New York (2015).
  - Price discrimination is not a bad thing. But a lack of price competition that allows discrimination can be a bad sign.

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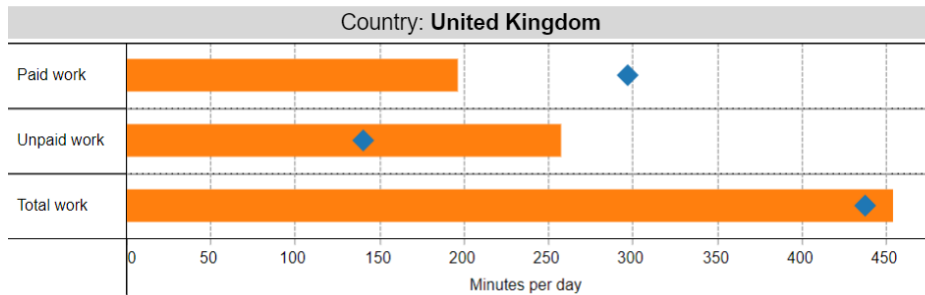
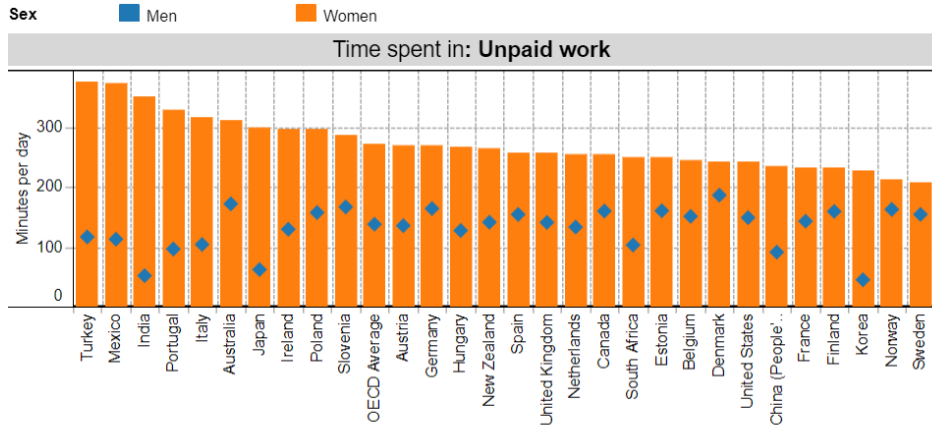
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2. It can lower prices on services that facilitate labour market participation by women

- Care services: childcare, schools, elderly care
- Household services: cleaning, washing, cooking

Making these cheaper increases participation because the burden of this unpaid work falls largely on women.

# Evidence: Burden of unpaid work



# Example application: The case of Japan

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- Japan recognized gender equality as an important goal of its supply-side reforms. In this context the Japanese Fair Trade Commission undertook a market study on the childcare sector in Japan in 2014.
  - It found there were unnecessary barriers to entry into the provision of childcare services that were suppressing output and driving prices up and quality down.
  - It also found the information available to help parents choose was inadequate and that municipalities needed to collect and present information to parents in a way that helped them choose.

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3. It can lower prices in markets that facilitate women's entrepreneurship

- E.g. the Credit & Investment markets that they need to grow their business

Evidence:

- There exists a gender-gap in start-up financing (Greenberg and Mollick, 2016; Breschi et al. 2018, EBRD).
- When women access credit they obtain worse conditions (Bellucci et al. 2010, Alesina et al. 2013).
- Anticipating this women are less likely to apply for a loan (Moro et al., 2017).

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4. It can remove of anticompetitive barriers to entry for women entrepreneurs:

- Restrictions on registering a business or opening a bank account
- Restrictions on ownership of land & assets (and hence ability to access credit)
  - 75 of 189 countries have a default separate property regime for married couples
- Restrictions on ability to inherit
  - 39 of 189 countries have discriminatory inheritance laws
- Restrictions on mobility (location, travel)
  - 31 of 189 countries restrict choice of where to live; 17 restrict travel outside the home

# Evidence on barriers to entrepreneurship

Action that women cannot legally perform in the same way as men	Number of Economies
Apply for a passport	37 – including Algeria, Bahrain, Egypt, Iran, Jordan, Oman, Saudi Arabia UAE, Yemen
Choose where to live	31 – including Bahrain, Egypt, Iran, Iraq, Jordan, Oman, Saudi Arabia, Tunisia, UAE, Yemen
Get a job without permission	18 – including Bahrain, Iran, Jordan, Kuwait, Mauritania, Oman, Qatar, Saudi Arabia, Syria, UAE, Palestinian authority, Yemen
Travel outside the home	17 – including Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Mauritania, Oman, Qatar, Saudi Arabia, Syria, UAE, Palestinian authority, Yemen
Apply for a national identity card	11 – including Algeria, Egypt, Oman, Saudi Arabia
Travel outside the country	6 – including Iran, Iraq, Qatar, Saudi Arabia, Syria
Register a business	4
Open a bank account	3

# More competitive markets...

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5. It strengthens the business case for improved balance on boards, and so creates more equality of opportunity

- Why? Because diversity can improve compliance and reduce exposure to sanctions for anticompetitive behaviour.
- Evidence: The OECD's International Cartels Database suggests that less than 5 percent of the executives prosecuted for involvement in international cartels between 2010 and 2016 were women (as against 16% of board seats for women in the OECD during that time).

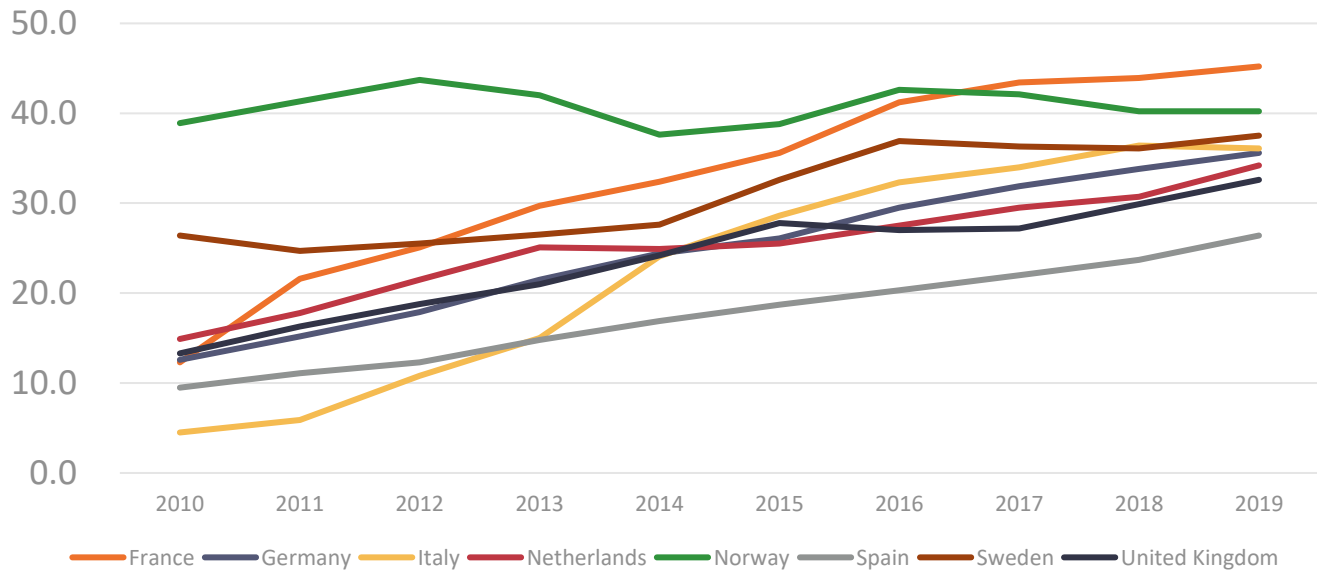
# Evidence

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- Unclear precisely why, possibilities include:
  - Moral/ethical positions?
  - Risk aversion?
  - Outsider?
- Evidence:
  - Women are more likely to whistle-blow to law enforcement on corporate misconduct or financial fraud (Feldman and Lobel, 2010).
  - Women are less likely to collude when that collusion adversely affects consumers (Haucap et al, 2021).

# Evidence

## Female share of seats on boards of the largest publicly listed companies



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6. It increases wages for women by reducing the scope for gender-based discrimination by employers

- Without market power firms are not able to indulge in inefficient discrimination that increases costs (Becker)
- Exception: if consumer demand is discriminatory a competitive market will deliver discriminatory outcome (e.g. art markets in Adams 2017)

# Evidence

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Empirical testing of Becker:

- Cooke, Fernandes & Ferreira, (2018) on impact of registration cost shock
- Hirsch et al. (2014), changes in product market competition
- Heyman (2013) on takeover shocks
- Black & Brainerd (2004) on trade shock
- Black & Strahan on bank deregulation shock (2001)

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7. It can prevent the wage reductions for women workers that occur when monopsony market power is created (or abused)

- Evidence: Research suggests that women typically have a lower wage elasticity of labour supply to a single employer than men (Germany, Norway, US, Italy, Australia)
- This means that when monopsony market power exists, it can be optimal for firms to use that power to discriminate.

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8. It can identify and remove anticompetitive regulatory barriers to switching for women workers

- Restrictions on mobility (location, travel)
  - Evidence: 31 of 189 countries restrict choice of where to live; 17 restrict travel outside the home (source: World Bank)
- Restrictions on jobs that can be done (e.g. working nights)
  - 104 countries have some form of job restrictions on women's work, for instance in industries such as mining, manufacturing, construction, energy, agriculture, water and transportation
- Restrictions on permission to take a job
  - 18 countries have restrictions on women's ability to take a job



# Prop 2: A gender lens can improve the effectiveness of competition policy

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1. It can improve the accuracy of market definition
  - Requires the use of the hypothetical monopolist test
  - Requires consideration be given to how different consumer groups respond
    - and hence whether a SSNIP might be profitable on some groups but not others

Examples:

- EU – deodorants (Unilever and Sara Lee, 2012), razors (Warner-Lambert/Gillette, 1993)
- CUTS India – skin creams

## Prop 2: A gender lens can improve the effectiveness of competition policy

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2. It can improve the effectiveness of consumer remedies that are recommended by market studies.

- When to introduce additional choice points
- How to disclose information
- How to frame information

Examples:

- Canada – broadband market study: women more likely to be ‘balanced consumers’

## Prop 2: A gender lens can improve the effectiveness of competition policy

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3. It can improve the effectiveness of whistleblowing programmes (of agencies & firms)

- The features that incentivise & encourage whistle-blowing differ by gender. So to work effectively these programmes need to appeal to both genders.
- Rewards, protections, and duties to report.

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So,

A gender lens can improve the *effectiveness* of competition policy, and

A more *effective* competition policy can help us address gender inequality.

What then can we recommend that agencies actually do?

# What can agencies do: menu of options

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- A. Look at what you have prioritised in the past and look in future to prioritise activities in...
- 1) Markets for substitute services to care and household work
  - 2) Markets for complements to workforce participation
  - 3) Markets where women consume
  - 4) Markets where women work (monopsony concerns)
  - 5) Markets with a large informal sector

# What can agencies do: menu of options

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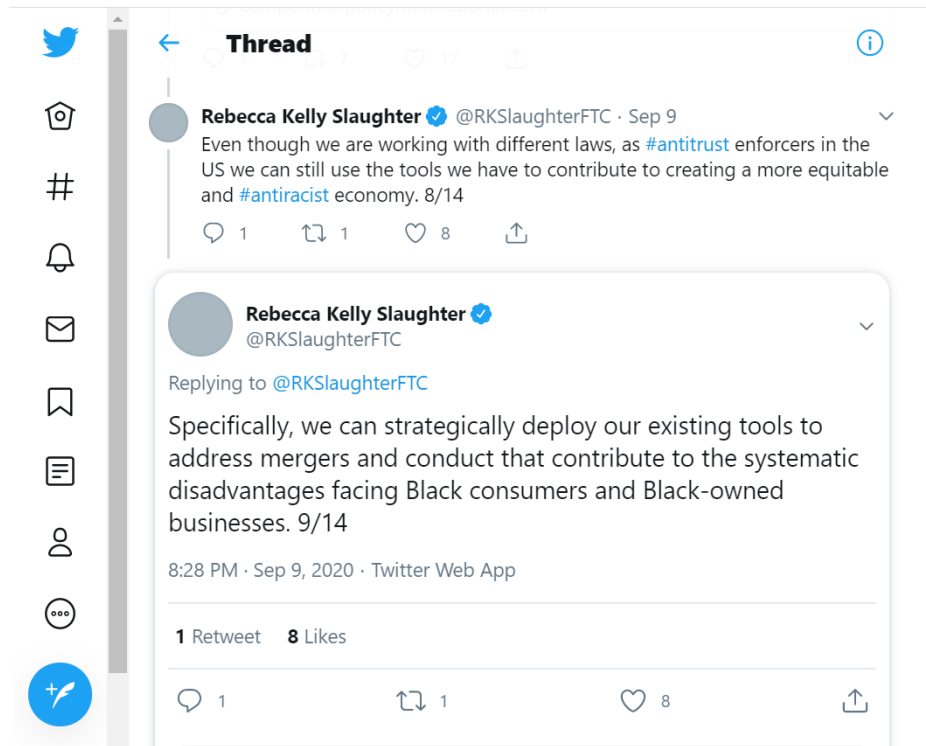
- B. Investigate regulatory barriers to women entrepreneurs (or to women as workers) within market studies
- C. Investigate the existence of price discrimination markets in product (and labour) market definition
- D. Ensure diversity of case-teams and decision-makers
- E. Consider diversity when designing whistle-blower programmes
- F. Consider whether proposed demand-side remedies work well for female consumers

# What can agencies do: menu of options

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- G. Work with government to increase the number of firms with diverse boards as a pro-competitive, pro-growth measure (not as a pro-equality measure)
- H. ...and finally (...we do not advise the creation of public interest tests but...) If you have a public interest test, then include gender equality within it

# Inclusivity beyond gender...



The image shows a screenshot of a Twitter thread. On the left is a vertical navigation bar with icons for home, search, notifications, messages, bookmarks, lists, profile, and a plus sign for more options. The main content area shows a thread titled "Thread". The top tweet is from Rebecca Kelly Slaughter (@RKSLaughterFTC), dated Sep 9. The text of the tweet reads: "Even though we are working with different laws, as #antitrust enforcers in the US we can still use the tools we have to contribute to creating a more equitable and #antiracist economy. 8/14". Below the tweet are icons for replies (1), retweets (1), likes (8), and a share icon. A reply from the same user is shown below, replying to @RKSLaughterFTC. The reply text is: "Specifically, we can strategically deploy our existing tools to address mergers and conduct that contribute to the systematic disadvantages facing Black consumers and Black-owned businesses. 9/14". Below the reply are icons for replies (1), retweets (1), likes (8), and a share icon. The interface includes a back arrow, a share icon, and an information icon at the top of the thread.

**Thread**

**Rebecca Kelly Slaughter** @RKSLaughterFTC · Sep 9

Even though we are working with different laws, as #antitrust enforcers in the US we can still use the tools we have to contribute to creating a more equitable and #antiracist economy. 8/14

1 replies 1 retweets 8 likes

**Rebecca Kelly Slaughter** @RKSLaughterFTC

Replying to @RKSLaughterFTC

Specifically, we can strategically deploy our existing tools to address mergers and conduct that contribute to the systematic disadvantages facing Black consumers and Black-owned businesses. 9/14

8:28 PM · Sep 9, 2020 · Twitter Web App

1 Retweet 8 Likes

1 replies 1 retweets 8 likes

# The OECD's work

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Follow the OECD research: [oe.cd/gicp](https://oe.cd/gicp)

**GENDER INCLUSIVE  
COMPETITION POLICY**



## **CALL FOR PROPOSALS**

**Gender inclusive competition policy – Developing the evidence**

Join the LinkedIn group: <https://lnkd.in/dDA2GGb>



# A role for inclusive antitrust?

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- The policy challenge of the age is to find a way to achieve inclusive growth
- The role of competition policy in helping to drive growth through efficiency, productivity and innovation is well understood.
- Its role in driving inclusivity remains the subject of debate.

# A role for inclusive antitrust?

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- Some heavily stylized perspectives on the role of competition policy in driving inclusivity:
  - Antitrust is about efficiency alone, and so has no role to play – it's the wrong tool and stretching it will damage the tool itself.
  - Inclusivity is a core purpose - failing to use the tool to deliver that purpose is a betrayal.
  - Antitrust can rely on structural shortcuts to improve administrability and thereby protect marginalised groups.

# A role for inclusive antitrust?

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An alternative perspective:

- Shortcuts knowingly sacrifice welfare. An economic basis is needed (presumptions must be rebuttable).
- The welfare of our citizens is the goal, but in a resource constrained world, our values determine which citizens' welfare is prioritised, in which circumstances, and how far we go to explore the impact on such groups.
- Antitrust can and should play a role as part of a coherent policy response to the problem. No policy is an island!
- If not, there will be inevitable political consequences that will damage the tool (as foreseen in Baker, 2013)

= Rawlsian Antitrust?

# Rawls: Theory of Justice

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- This paper suggests that reconciling competition and equality, can be seen to correspond to Rawls' attempt to reconcile liberalism and equality within his proposed principles of justice.
- To develop those Rawls asked what decisions we would make about the basic structure of society if we had no knowledge of what position we would end up having in that society? the 'Veil of Ignorance'

# Rawls: Theory of Justice

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- Rawls argued we were risk averse and that we would therefore arrive at 3 principles that we would apply lexically:
  - 1: greatest equal liberty
  - 2b: equal opportunity
  - 2a: difference

# Principle 1: Greatest equal liberty

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- In Rawls' general context this sets out that our priority would be to ensure freedom for all, thereby removing the risk that we'd be denied our liberty.
- I argue that within a market context we can interpret this as requiring that people should have access to the best value possible because that gives them the greatest freedom to achieve their goals and live a fulfilling life.
  - E.g. over-charging eats into an individual's ability to invest in themselves, their community and their experiences and therefore reduces their liberty.
- This might correspond to an 'efficient citizen welfare' standard (to clarify that workers welfare can be relevant).

# Principle 2b: Equal opportunity

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- For Rawls this is about there being an equality of opportunity for individuals
- In an antitrust context we think about the equal opportunity to compete on the merits, e.g. both free from being excluded by incumbents, and free from disadvantageous distortions of the playing field.
  - These can be *instrumentally* problematic because they threaten to cause an increase in prices (or lower quality, innovation or wages) and so may already be inconsistent with the greatest equal liberty.

# Principle 2b: Equal opportunity

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- But what about as an *intrinsic* offence ?
  - E.g. exclusion from a highly competitive market that had no effect on market outcomes, but which would still offend this principle due to its impact on the equality of opportunity for the entrepreneur?
  - As there's no impact on outcomes, this takes us outside the primary goal of antitrust and suggests the need for a secondary objective.

# Principle 2a: difference

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- Rawls suggested that if there were a set of ways to structure a society that delivered equal liberty to all, and equality of opportunity, then the set of rules that would be selected by those behind the veil of ignorance would be those that deliver the greatest benefit to the least advantaged members of society.
- Again there's no impact on outcomes, so again this takes us outside the primary goal of antitrust and suggests another element of a secondary objective

Plus: the 'Just Savings' principle - intergenerational transfers

# When do 2<sup>nd</sup>ry objectives matter?

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- Uncertainty & Prioritisation
  - Before an agency devotes resources to a case the effects and hence the strength of the case under the primary objective is often highly uncertain.
  - A secondary inclusivity objective would lead to a focus of resources on markets in which if there is a competitive restriction, it is likely to be one that harm's marginalized citizens
- Uncertainty & Analysis
  - A secondary inclusivity objective might also clarify the need for agencies to dig deeper to identify possible harm to marginalized groups. E.g. to look at preferences, switching behavior and sensitivity to price (or quality) amongst marginalized groups, and to reflect those in the analysis and remedies adopted.

# When do 2<sup>nd</sup>ry objectives matter?

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- Uncertainty & Rebuttable Presumptions
  - A secondary inclusivity objective might also suggest that a rebuttable presumption of anticompetitive effect, or a lower evidentiary standard, be applied to markets in which any anticompetitive effect is likely to have a high inclusivity cost.
  - Alternatively, the SIO might suggest a more general rebuttable presumption of anticompetitive effect if inclusivity is more likely to be harmed by under-enforcement than by over-enforcement.
- Uncertainty & Private Litigation
  - Opt-out class actions in order to include marginalised citizens
  - Need to guard against courts erecting barriers to litigation for marginalised citizens. E.g. discovery to precede any substantive assessment by the courts in order to identify the degree to which marginalised groups might be harmed by the conduct in question.

# Conclusions

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- Efficient Citizen welfare standard
  - Economic basis
  - Transparent on values that guide us in the presence of uncertainty
- Secondary inclusivity objective
  - In prioritisation
  - In analysis
  - In rebuttable presumptions and/or evidentiary standards
  - In the legal framework for private litigation

# Thanks!

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## References:

- Pike, C. (2021), Fideres Response to the UK Government Consultation on Reforming Competition and Consumer Policy. [Fideres](#)
- Pike, C. (2021), Rawlsian Antitrust. CPI Antitrust Chronicle & CCP Working Paper 21-04. <https://ssrn.com/abstract=3832594>
- Pike, C. & Santacru-Vasut, E. (2019) “Competition Policy and Gender” OECD, Concurrences, <https://ssrn.com/abstract=3487471>
- Ennis, S., Gonzaga, P. & Pike, C. (2019) “Inequality: A Hidden Cost of Market Power”, Oxford Review of Economic Policy, Volume 35, Issue 3, Autumn 2019, Pages 518–549, <https://ssrn.com/abstract=2942791>



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