

# Public Interest, Industrial Policy, and Inclusive Growth

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# Thesis

- Three different problems
- **1. Public interest**, internal political economy: aim is to address non-market problems; the nation bears all the major costs and costs on outsiders are incidental
- **2. Industrial policy**, where the intent is to impose costs on outsiders for strategic international advantage
- **3. Questions** that may be raised [in part] **on competition-ground proper:**
  - What is competition that we want to protect? What is unreasonable concentration that harms competition?
  - Possible appropriate elements in competition analysis?
    - **Inclusive growth**
    - **Populism** or the push-back against: “the elite get (almost all of) the gains of trade”

# Thesis cont'd

- To the extent that public interest values are also competition values, no need to worry about how to incorporate public interest
- Therefore, I take up **inclusive growth** and **populist claims** first to examine to what extent these claims can be part of making competition and markets more robust,
  - and when they undermine robust markets
- Thesis:
  - Where large masses of people have been excluded from markets, emphasis on market access and promoting innovations by those without power would normally lead to stronger, better-working markets
  - Where systems have become tilted to favor incumbents even as against inventive challengers, ... same
  - Public interest in competition law: entirely a national choice which should turn on costs and best tools and should be done with transparency and process
  - Industrial policy: it is in part purely a national choice, but where it is a strategic game against foreigners it runs against the soft consensus of cosmopolitanism

# I. Challenges on competition-ground proper: inclusive growth; the populist critique

- A. The background: Who and what is competition law protecting?
  - When the law seems to be protecting incumbents and systematically allowing huge concentrations, there is room to shift towards more serious regard for those left out
    - Example: David Lewis' decisions for the South African Competition Tribunal
      - Medicure, Ellerins, Nationwide Poles [abuse of dominance, mergers, markets]
    - Example: use of market studies to open markets and deconcentrate, as UK BA
  - Effect: more inclusive development, more equity, more room for those without connections to engage and succeed
- B. Does this (access-leaning antitrust) satisfy the populist critique?
  - It goes some way
  - If the populist critique wants radical deconcentration in spite of costs to the economy and competitiveness, it does not satisfy
    - But for those who want more equity consistent with efficiency, it does – and there is a big space

## II. Public Interest

- Jobs, SMEs, opportunity for historically disadvantaged
- Nations must decide their values and solutions in view of their problems and context
  - Should count the costs; consider whether there are better tools
- When they decide to use the competition law framework
  - Issues of transparency
  - Who decides
  - With what process
  - Consider market-friendly solutions
    - South Africa requiring merged firms that lay off to retrain; requiring merged firms to fund capacity-building of SMEs rather than quotas

# III. Industrial policy

- There are all sorts of industrial policies and every nation has them
- Some industrial policy is entirely consistent with competition law/policy
  - Industrial policy can incentivize firms
  - “National champion” is sometimes used merely to connote efficiency and not market power, where there are many firms in the world
- But when firms “build” national champions to confer market power in the world, that is loosely considered a trade-and-competition offense
  - It is nationalistic, parochial, imposing costs on others
  - Similarly: standing in the way of foreign takeovers because the nation wants to coddle its domestic firms see E.On/Endessa (EU), or opportunistic merger conditionality

# CONCLUSION: International Norms?

- 1 In this interdependent world without an antitrust center it is necessary for nations to flexibly interact and respect one another
  - “sympathy of systems” [Trebilcock/Fox]
- 2 Especially in economies of vastly skewed distributions of power and opportunity, the competition paradigm appropriately considers the left out majority in analyzing access to markets and concentrations
  - where regard for these values can also enhance market competition
- 3 Public interests that may be in tension with competition
  - best tools, costs, clarity, process
- 4 Industrial policies to put costs on foreigners
  - They are against international trade-and-competition soft norms