

COMPETITION BETWEEN ANTITRUST AGENCIES:
'WHAT DETERMINANTS INFLUENCE ANTITRUST AGENCIES' LEADERSHIP AMBITIONS?'

While antitrust agencies regulate competition dynamics there is ample evidence that they also engage in competition amongst their peer agencies to determine which agency is considered the most cutting-edge, the most effective or the most active – and one worthy of leading others. Regardless of how one defines this quest for international recognition, many antitrust enforcers have expressed the aim of making their respective competition agency a “leading” competition agency. What does “leadership” amongst antitrust agencies actually imply? What are the incentives to promote a particular theory or practice? Which benchmark should be used, and against which counterfactuals, to evaluate such perceived or sought-after leadership? What is the impact on market players affected by leadership ambitions?

Mathew Heim and Rafael Parisi, Senior Fellows of the GW Competition & Innovation Lab (GW CIL) at the George Washington University, have embarked on a research project assessing the conditions and parameters under which antitrust agencies can demonstrate leadership among antitrust peers around the world. The project explores what can be learned of such ambitions and notably to provide a “users” perspective of what leadership ambitions could include. The project will seek a better understanding of what motivates antitrust agencies to seek to influence their peers, at a time of bolstered antitrust enforcement.

Leadership ambitions help to signal to their peers those areas where an agency wishes to excel. These can be as varied as promoting quantitative output and also qualitative or intellectual creativity, such as novel theories of harm to tackle alleged anticompetitive conduct. Political scientist Oran Young noted in 1991 that leadership is “*ill-defined, poorly understood*”¹: more than 30 years later, this remains true.

Assessing leadership among antitrust agencies matters: there are now over 130 competition jurisdictions around the world. The emergence of antitrust jurisdictions throughout the world was mostly due to trade liberalization that started in the 1980s², yet trade liberalization is now under significant pressure. Relevant to this project is also the fact that the European Union and United States have been actively competing to promote their respective antitrust models to both developed and developing countries, highlighting competition at a more fundamental level.³

¹ Oran R. Young, “Political leadership and regime formation: on the development of institutions in international society”, 45(3) *International Organization* (1991), pp.281-308. See also David Laitin, Ian Lustick, “Leadership: A Comparative Perspective”, 28(1) *International Organization* (1974), pp.89-117 (noting p.89 that “leadership has been a particularly neglected concept.”)

² See, generally, Melike Arslan, “Legal diffusion as protectionism: the case of the U.S. promotion of antitrust laws”, 30(6) *Review of International Political Economy*, (2023), pp.2285-2308; Tim Buthe, “The politics of market competition”, in L. L. Martin (Ed.), *The Oxford handbook of the political economy of international trade*, (Oxford University Press, 2015), pp. 213–232; Anu Bradford, Adam S. Chilton, Competition law around the world from 1889 to 2010: The competition law index,” 14(3) *Journal of Competition Law & Economics*, (2018) pp.393–432.

³ See generally, Anu Bradford et al., “The Global Dominance of European Competition Law Over American Antitrust Law”, *Journal of Empirical Legal Studies*, Vol. 16, p. 731, 2019 (2019). The authors also note that there are multiple motivations for states to seek export their laws, including lowering the costs of home companies entering foreign markets, given that the host jurisdictions is replicating the familiar regulatory framework; or

Now, many antitrust agencies compete over policy leadership, as they look to distinguish themselves and find their place within the international competition community.

Competition agencies may expressly state their intention to ‘lead’ their peers – some are more vocal about this than others, even actively promoting their approach around the world. There may be some logic to this, as agencies are facing increasingly common challenges, whether exogenous shocks such as supply chain disruptions or policy priorities such as sustainability or digital markets, agencies seek to pioneer new solutions. There may also be a tendency for agencies to respond publicly to increasing political expectations that competition policy can help address broader societal challenges. Exploring the focus of leadership should be enlightening help shed light on agencies’ own incentives to innovate and ‘compete’ for the best innovations in policy and enforcement.

For example, the UK’s Competition Markets Authority stated, in its 2023/2024 Annual Plan (reflecting its *Vision, Values and Strategy* dating back to 2014), that “...our overall ambition is consistently to be among the leading competition and consumer agencies in the world”. The CMA’s [2018/19 Annual Plan](#) was more specific aiming to be “trusted and challenging” adviser to UK government and leading domestic agencies on competition in the regulated sectors, with CMA officials focusing [leadership](#) in challenges of the day, such as digital age and green economy. The CMA is by no means the only agency highlighting their leadership in addressing challenges in digital markets. In 2021, for example, Andreas Mundt, the President of the German Federal Cartel Office, [wrote](#) that Germany’s competition law reforms “to address tech giants” gave it “one of the most modern competition laws in the world” noting that the legislative process for similar tools at the European level were still, at that time, at a relatively early stage.

Some innovative competition initiatives do enjoy the accolade of ‘leadership’ ex post. For example, Australia’s Competition and Consumer Commission (ACCC) has been recognised for its leadership in developing a News Media Bargaining Code, that governs the relationship between Australian news businesses and ‘designated’ digital platforms who benefit from significant bargaining power. Although the ACCC did not aggressively advocate that the Code was intended to be a world-leading initiative, commentators did describe the Code as such after it came into force⁴ and the Code has been emulated in Canada’s 2023 Online News Act, amongst others. The project will also explore those initiatives have actually influenced other jurisdictions to understand what characteristics are relevant to “leadership” principles.

Academic literature on competition enforcement prioritization indicates only limited overlap between traditional priorities and leadership ambitions. Agencies’ prioritization or workplans tend to be broad, affording agencies the necessary margin of discretion. This can include the desired portfolio of cases, types of harm or priority sectors that an agency wishes to prioritise. On the other hand, leadership ambitions tend to be less formalised and often focused on more

that the jurisdiction which successfully exports its laws can define global markets in its enforcement practices, in a way that extends its economic influence.

⁴ See e.g. Diana Bossio et al., “Australia’s News Media Bargaining Code and the global turn towards platform Regulation”, *Policy & Internet*, 2022;1–15. “The Australian Federal government found itself leading the world in platform regulation when, in 2021, it enacted the Australian News Media and Digital Platforms Mandatory Bargaining Code?”

limited issues. In most cases, leadership motivations appear to be linked to increasing international influence and/or reputation yet, unlike prioritization or workplans, leadership ambitions are generally not expressed in detail or with measurable objectives and agencies seem to rarely track progress systematically against leadership ambitions.

A notable exception is Canada's Competition Bureau (CCB). In 2020, the CCB launched a [Strategic Vision for 2020–2024](#) with the ambitious goal of being “*a world-leading competition agency, one that is at the forefront of the digital economy and champions a culture of competition in Canada*”. In order to achieve this ambition, the CCB embarked on a series of reforms, many linked to addressing challenges in the digital economy. The CCB's Commissioner, Matthew Boswell, noted that the agency's [2022-2023](#) achievements through enforcement action, promoting competition in Canada and investing in the CCB were consistent with that vision. The CCB's 2022-2023 Annual Plan also referred to playing a leadership role in international organizations and networks. Interestingly, the Korean Fair Trade Commission and the US Federal Trade Commission (FTC), amongst others, have also expressed interest in leadership in international competition fora.

Younger agencies or those from smaller economies also expressed 'leadership' aspirations at the regional level. For example, the Jamaican Fair Trade Commission's [Strategic Business Plan 2021 - 2025](#) describes its strengths including “*the Staff's experience, professionalism, and competence, the organization's sound processes, procedures, data management systems, and recognition as the leading competition agency in the region [of Caribbean Community (CARICOM) Member States]*”. Others take a different perspective; a 2021 [report](#) from the Organisation for Economic Cooperation and Development (OECD) on Competitiveness in South East Europe noted that the Serbian Commission for Protection of Competition “*has been performing positively over the last few years, confirming its place as a leading competition authority in the region*” with the report suggesting that “*Increasing the number of infringement decisions and the amount of fines levied against anti-competitive behaviour would further strengthen its reputation, thus fostering deterrence and competition compliance and making the leniency programme more effective*”.

Institutional leadership of competition agencies can materialize by strategic visions, the level of influence and international collaborations, the ability to foster innovation both inside the agency and in markets, the antitrust enforcement levels, the success in agency's capacity-building, but also in users' (i.e., business users and consumers) satisfaction. In light of the multiplicity of ways to measure leadership, a modicum of rigour is important. For, misplaced leadership ambitions can lead to suboptimal outcomes or create tensions between efforts to promote international cooperation and competition between agencies, for example in merger review.

In addition, while leadership ambitions are naturally focused on influencing peer agencies, the interests 'users' of the competition law system often appear secondary. Leadership ambitions, whether 'thought leadership', setting standards or pushing boundaries of competition policy, affect business decisions and investment climate. In order to understand what users consider 'leading' characteristics, the project will in particular seek to gain insights from habitual users i.e. parties notifying a transaction, a defendant in enforcement proceedings and third parties or complainants, as well as respondents sector inquiries or market studies.

Intuitively, users seek predictability and consistency across cases, in other words certainty and timeliness. In the same vein, while there should be a recognition that new challenges may necessitate novel but proportionate approaches, these should be based on recognisable principles, including improving consumer welfare or efficiencies. One would also expect users to focus on procedural ‘stability’, notably due process principles including the protection confidential information and the respect of legal privilege, with the corollary of true institutional independence. Transparency is also critical, including clear communication of goals to staff and external groups, meaningful engagement with parties, of procedural steps and clear articulation of the reasoning behind any decisions or policy direction.

To identify objective characteristics of ‘leadership’ and metrics applied to antitrust agencies, this research project aims to improve our understanding by gathering different interest groups’ perspectives, as well as by injecting users’ expectations into antitrust agencies’ reflections on ‘leadership’. This research project will inform the policy debate, will provide valuable information at a critical time when antitrust agencies seek to gain increased visibility and heightened recognition while revisiting the very objectives of competition law objectives. The research project fits into the International Competition Network’s Agency Effectiveness Working Group ongoing [project](#), which evaluates how agencies plan their work, monitor progress, review and measure effectiveness.

The research project will lead to the publication of a report in the fall of 2024 and have the conclusions presented at a GW CIL event and submitted to the OECD. If you would like to be involved in the research project, please contact Rafael Parisi at rafael.parisi@email.gwu.edu.