

Unclassified

English - Or. English

3 June 2025

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

**Summary of discussion of the roundtable on the Interaction between Competition and
Democracy**

Annex to the Summary Record of the 144th meeting of the Competition Committee

5-6 December 2024

This document prepared by the OECD Secretariat is a detailed summary of discussion of the Roundtable on the Interaction between Competition and Democracy, held by the Competition Committee on 6 December 2024.

Please contact Mr Antonio CAPOBIANCO if you have questions about this document.
Email: Antonio.Capobianco@oecd.org

JT03567520

Summary of Discussion of the Roundtable on The Interaction Between Competition and Democracy

1. Introduction

On 6 December 2024, the Competition Committee held a roundtable discussion on the Interaction Between Competition and Democracy chaired by Professor Frédéric Jenny.

The Chair introduced the topic of discussion, the link between competition and democracy. He framed the discussion within the rising concern that increased concentration and acquisition of market power may lead to the weakening of democratic processes, especially in the context of digital information. He noted that the Global Forum on Competition had held an initial discussion on whether Competition and Democracy were Symbiotic in 2017 but that this roundtable would be more in-depth.

The Chair then introduced the three expert speakers who each gave two presentations during the discussion:

- **Elias Deutscher**, Visiting Scholar at the University of East Anglia
- **Viktoria Robertson**, Professor of Competition Law and Digitalisation at the Vienna University of Economics and Business
- **Zephyr Teachout**, Professor of Law at Fordham Law School

The Chair outlined that the discussion would be organised around three issues:

- The direct constitutional basis of competition law in some countries;
- The indirect link between competition policy and democracy; and
- The operationalisation of competition and democracy.

The Chair gave the floor to the Secretariat to present the main findings of its background paper.

The Secretariat began by stating that, while democracy is not an everyday topic of discussion for competition authorities, it is still an important consideration. The paper delves into the link between competition and democracy and how competition may contribute to a range of positive attributes, including democracy. The first section of the paper discusses how democracy is typically defined, although there is no straightforward definition. The paper examines the many shared values between democracy and competition law and policy, such as transparency, rule of law, and trust in public institutions. Democratic values are important for competition; for example economic freedoms and property rights are supporting pillars of democracy and they are also deemed essential for the prosperity of market-based economies. The paper also acknowledges the empirical challenges of measuring the relationship between competition and democracy, which include values that are subject to measurement error, difficulty obtaining enough data and problems with identifying causal relationships.

The paper further discusses how competition may affect democracy and vice versa. A key theme is the idea that competition affects democracy through the link between economic and political power. Firms holding market power through a lack of competition may gain economic power, which may then be used for political power, meaning the ability to exercise power differing from democratic will. This may occur through lobbying but also

through other discreet and indirect methods. While market power may not always lead to economic power and political power may not necessarily stem from economic power, there are some markets where this link is particularly susceptible, such as those involving information or the market for ideas.

The paper's second section explores the role of democracy in competition policy. Competition policy may play an indirect role in democracy; preserving competition in and of itself can be considered as helping promote democracy. The paper offers four categories for potential more direct roles. First, competition authorities conduct business as usual but prioritise cases in particular sectors where there is increased concern about a democratic effect. Second, an external benchmark approach which relies on external legislation to inform competition assessments in relation to potential democratic harms. The third consists of approaches that may place more weight on concentration than on consumer welfare and efficiency. The fourth is the direct consideration of democracy when conducting an assessment. The Secretariat concluded by emphasising that the many interactions between competition and democracy are not always straightforward, but it is difficult to argue that less competition is beneficial for democracy.

The Chair thanked the Secretariat for its synthesis of the background paper and then introduced Ms. Gillian Dorner, Deputy Director at the OECD Directorate for Public Governance (GOV), who gave a presentation about their work on democracy.

Ms. Dorner introduced GOV's initiative on reinforcing democracy, which began in early 2021. Some members had asked GOV to investigate the current challenges that democracy faced (e.g., lower voter turnout, disengagement with democratic processes, rising polarisation) rather than the basic tenets of democracy (e.g., separation of powers). The Public Governance Committee identified five key pillars for action based on the current challenges for democracy:

- Strengthening information integrity and tackling disinformation;
- Enhancing representation and citizen participation;
- Stronger open democracies in a globalised world, with a focus on responding to foreign interference;
- Green governance, or how a democracy prepares to deliver on the green transition; and
- Transforming public governance for digital democracy.

A foundation of this initiative was GOV's survey on drivers of trust in public institutions. While high levels of trust can exist in an autocracy, the level of trust in a democracy is an effective sign of the health of the relationship between citizens and public institutions. The survey was conducted in 2023 across 30 OECD member countries and found that the trust levels are decreasing. The survey observed levels of trust based on other factors such as socioeconomic backgrounds and confidence in the ability to have a voice in democratic decision-making. It found that there is a greater polarisation of trust in public institutions, particularly between men and women. Additionally, the survey looked at what drove those levels of trust in government, split into two categories: trust related to citizens' everyday interactions with governments and trust related to how governments make decisions on long-term policy issues. While there is a higher level of trust of the former, the latter lacked trust. GOV also tracked which drivers are most important to which levels of government. For trust in national government, the most important driver is the government's balance of intergenerational interests whereas local government is more about the ability to voice opinions on local matters.

GOV is also working on issues relevant to competition policy such as transparency and integrity in relation to lobbying. In 2010, GOV published the OECD recommendation on Principles for Transparency and Integrity in Lobbying, which has since been revised. It provides concrete guidance for governments in ensuring that lobbying and other similar activities support effective public decision-making while limiting the risks of undue influence. This is one of the first international standards that takes a bird's eye view of lobbying and influence. Regarding the topic of information integrity, GOV has developed a policy framework based on its 2024 publication titled, “Facts not Fakes: Tackling Disinformation, Strengthening Information Integrity”. The framework proposes three avenues for action: strengthening societal resilience to disinformation; enhancing transparency, accountability and plurality of information sources; and upgrading institutional architecture to be able to effectively combat misinformation and disinformation. GOV is currently in the process of developing an OECD recommendation in this area, and Ms. Dorner expressed GOV’s interest in involving the Competition Committee given the competitive elements that play into the social media landscape.

2. The Direct Link Between Competition and Democracy

The Chair thanked Ms. Dorner and then invited Dr. Elias Deutscher to speak about the political dimension of competition and the direct link between competition and democracy.

Dr. Deutscher started by noting that although it is important to consider how growing industry concentration undermines democracy, it is helpful to focus on what competitive markets and democratic processes have in common to better understand the interaction between competition and democracy. First, competitive markets and democratic processes fulfil a similar function in society—they both aggregate individual preferences and translate them into social choices and outcomes. Second, as previously mentioned by the Secretariat, competitive markets and democratic processes share common virtues that underpin the symbiotic relationship between competition and democracy. Dr. Deutscher summarised them as two core principles:

- **Responsiveness principle:** competitive markets and democratic processes are responsive to the individual preferences of each and every market participant and citizen rather than being shaped by a higher moral principle or the will of a single person.
- **Non-dictatorship principle:** for competitive markets and democratic processes to remain responsive to individual preferences, there must not be a single player or coalition which concentrates all the power that allows them to impose their preferences on the rest of society.

Competition works on the responsiveness principle, making sure that market processes and outcomes remain responsive to the preferences of many market participants, and the non-dictatorship principle, ensuring that concentrated instances of power are kept in check. Dr. Deutscher introduced the “competition-democracy nexus” which comes in different versions depending on how demanding it formulates those principles. A thin version of the competition-democracy nexus assumes that both principles are only undermined if a player exercises its market power to interfere with the choices and preferences of other market participants. On the other hand, a thick version of the competition-democracy nexus assumes that both principles are already undermined by the mere existence of powerful players who may interfere with the choices and preferences of other market participants.

The Chair thanked Dr. Deutscher for sharing his framework on the relationship between competition and democracy and then asked Professor Viktoria Robertson to speak about this topic, especially in the context of the increasing digitalisation of the economy.

Professor Robertson began by stating that there is a growing body of research showing how data and its usage is degrading the democratic process. She posed the question of whether concerns related to digital democracy should take a more central role in competition policy and, if so, what that might look like. From a historical perspective, the US played a central role in this regard by passing the Sherman Antitrust Act in 1890 due to great concerns about the undue political influence of big trusts and their concentration of power. Recalling Eleanor Fox's 2017 statement that economic and political freedoms are intertwined, Professor Robertson highlighted Lina Khan as an important figure in the New Brandeis movement, which she described as a movement based on structuring society on a democratic foundation. Further, in Europe, ordoliberal thinking has greatly influenced the development of EU competition law. Professor Robertson named Franz Böhm and Margrethe Vestager as figures who have voiced that democracy and competition law and policy are very important for each other. Democracy is the foundation of social contracts in the EU, which is found in Articles 2 and 3 of the Treaty on European Union. They shed light on the necessity of updating the approach to fundamental rights in the face of digitalisation. Professor Robertson described the constitutional perspective as especially interesting because the EU's antitrust provisions, Articles 101 and 102 of the Treaty on the Functioning of the European Union, have quasi-constitutional standing because they are in the founding Treaty.

The Chair thanked Professor Robertson and then invited Lithuania to elaborate on its contribution, which states that, according to its Constitution, the national economic system is based on private ownership, freedom of individual economic activity and the necessity to protect freedom of fair competition. Considering that there are other values in Lithuania's Constitution that may contradict or be weighed against this objective, the Chair asked Lithuania to explain the extent to which this principle is important in the enforcement of competition law and the trade-offs that may occur.

Lithuania shared that its Constitution directly mentions the need to protect fair competition and that its Constitutional Court is active in this regard, ruling that national or municipal institutions cannot ignore the principle of fair competition when adopting laws. A recent example occurred in 2023, when Lithuania's Parliament created an exception for in-house contracts between municipal institutions and their own companies. The Constitutional Court deemed this to be unconstitutional legislation that must be changed so that in-house contracts are not excluded from the scope of competition law. Lithuania's competition authority is also trying to promote the idea that competition can help preserve democratic institutions from misuse. In 2022, the competition authority determined that the Lithuanian pharmacy association and its pharmaceutical companies entered into anti-competitive agreements by coordinating wholesale and retail mark-ups of reimbursable medicines that was subsequently approved by the Lithuanian Ministry of Health. While the undertakings claimed that those markups were necessary for them to cover their costs, the competition authority discovered that they guaranteed additional profits and concluded that the undertakings engaged in manipulation of information during the democratic legislation process and breached competition law. The undertakings appealed, claiming that the competition agency's decision infringed on their right to freedom of association and right to lobby. However, the competition authority stated that the right to participate in the legislative process does not permit manipulation of this process by submitting distorted economic data to the decision-making body. Lithuania mentioned that the court hearing would occur in the next month.

The Chair asked if anyone had any comments. **Dr. Deutscher** reiterated the importance attributed to the interplay between competition and democracy in the constitutional order of some countries. He also agreed with Professor Robertson that constitutional boundaries are needed to ensure that markets operate in a free and democratically friendly way. Dr. Deutscher found Lithuania's contribution interesting for its linkage between the restriction of competition and manipulation of the democratic decision-making process, which illustrated the non-dictatorship principle that he referred to earlier in the discussion.

3. The Indirect Link Between Competition and Democracy

The Chair transitioned to the second part of the discussion and asked Professor Zephyr Teachout to speak about the indirect link between competition and democracy.

Professor Teachout began by sharing that recent polling from the US showed high levels of distrust in the federal government but even higher levels of distrust in corporate monopolies. This is relevant to the global democratic crisis. Professor Teachout focused on the mechanisms through which firms with market power have methods of systematically corrupting and undermining the democratic process. Many firms (except for the smallest players) engage in forms of direct lobbying, but for dominant firms, lobbying is just one of several strategies used to influence policy. Professor Teachout named three examples of such strategies. First, dominant firms may engage in strategic takeovers of trade associations. Professor Teachout pointed out how Amazon has been engaging with multiple technology trade associations and becoming the dominant funder of a major retail trade association. Other members of the trade association may have antagonistic interests, but the dominant funder can set the agenda for the trade association and change policy. Second, dominant firms may also systemically fund think tanks, research bodies and academics in a way that distorts the information available to competition authorities and the public. Third, firms with market power hold a constant threat of exit and use this to leverage their campaign contributions and lobbying efforts.

Professor Teachout stated that dominant firms also have the capacity to directly exercise political power through pressure on their suppliers. Such pressure is typically not explicitly stated, and suppliers will often keep quiet out of fear of economic retaliation. Dominant firms leverage this for political ends. In addition, dominant firms effectively act as forms of private government. For example, when Facebook changes its privacy terms, Meta acts as a de facto privacy regulator. Another example is when the distributor in the concentrated beef market in the US changes the hormones allowed, thus acting as the de facto regulator of acceptable hormones. Lastly, in concentrated societies (stemming from the collective impact of concentration), concentrated industries create fear. Professor Teachout quoted Montesquieu on fear as a creeping sign of tyranny throughout society, undermining free speech and expression. For example, she referred to Google's funding of civil society in the US usually comes with conditions and, in 2017, alleged that Google got eight advocates fired within two months from a think tank that expressed support of Margrethe Vestager's action on Google. Most other civil society organisations do not get fired, but they operate understanding that Google represents a latent threat that could act to remove funding if they speak up. Farmers are fearful of speaking up if they lose access to distributors or purchasers, pharmacists are fearful of speaking up if they are dependent on key suppliers and publishers are fearful of Amazon. Professor Teachout concluded that this leads to a high degree of distrust in society.

The Chair thanked Professor Teachout and then asked Italy to speak about the evolution of competition law contributing to the democratic process in Italy.

Italy referred to Article 41 of its Constitution, which recognises the fundamental value of the freedom of private economic initiatives, with the caveat that such activities cannot be carried out in conflict with social utility or in a way that may hurt health, the environment, safety, liberty and human dignity. At the time, Italy was transitioning from a period of state control that lasted in the form of state monopoly for a while. This hindered the realisation that a market economy could ensure a level playing field. However, since the 1990s, constitutional rulings have recognised that competition is a means to an end, namely social cohesion and democratic values. In 2001, when certain competencies were allocated from the state to regions, competition was formally mentioned in the Constitution. In order to ensure social cohesion and trust in democratic values, it was deemed necessary that regional laws would not create barriers against private initiatives or favour certain citizens over others. Accordingly, competition law became a tool for the state to ensure social cohesion. Italy argued that its competition authority can play a major role in supporting democratic values through prioritisation and advocacy, particularly by focusing on sectors that greatly impact citizens. Italy named the energy sector as an example where the competition authority can use its competences to conduct market investigations and ensure that consumers are not misled.

The Chair then asked Norway about the constitutional role of competition law within the Scandinavian model, which Norway described in its contribution as a comprehensive welfare state, with centralised trade unions and a system of regular consultation between government unions and employers.

Norway stated that the Scandinavian model leads to high levels of trust in democratic government institutions, and Norway has supported this trust by introducing integrity measures which aim to protect policymaking and public administration from undue influence by market players. These measures include independent regulatory bodies like competition authorities, who are important for ensuring trust in markets through effective enforcement of competition law. Authorities must also adhere to regulations that afford citizens and businesses the mechanisms for redress and appeals, guaranteeing that the authorities operate within a framework of legal checks and balances. Norway acknowledged room for improvement, citing a government expert committee report that highlighted the need to strengthen public procurement oversight by, for example, encouraging data availability and enhancing monitoring systems. Norway also said that it is important to clearly communicate the value of competition law to demonstrate how it benefits consumers and workers. Norway concluded by saying that enforcement of competition law promotes efficient use of society's resources, enhances economic well-being and is essential for continuous public trust.

The Chair then asked the US to elaborate on its contribution about competition supporting democracy and the marketplace of ideas.

The US began by highlighting examples of how the Antitrust division at the Department of Justice (DOJ) has supported the marketplace of ideas, starting with the DOJ's work to block the merger of Penguin Random House and Simon & Schuster. The DOJ's theory of the case was that the merger would reduce the advance payments to authors when they are starting to write an anticipated bestseller and, if payments are lower, that would reduce their output. The DOJ's win at trial supported the authors and the public along with the ability to have more information in the marketplace of ideas. The DOJ also has litigation against Google regarding access to information, which also directly impacts the marketplace of ideas. In the broader context of economic freedom, the US believes that economic and political freedoms are mutually reinforcing. For example, boycotts are used in the US to achieve political goals, and this is only possible when economic choice is available. The US cited Justice Thurgood Marshall, who stated that antitrust laws were as

important for the preservation of economic freedom as the Bill of Rights for political freedom. The US also noted that competition is an alternative to government favouritism. In its founding history, the US rejected the original concept of monopoly, particularly the King's grant of a privileged selling status to a favourite trader and unduly impinging on individual liberty by depriving other traders of freedom to compete. The American Revolution and the road to independence had been sparked by the Tea Act of 1773, which had granted the British East India Company a monopoly on the sales of tea and other goods to the American colonies. The US then gave the floor to its Federal Trade Commission (FTC) colleagues, which gave a brief overview of its efforts to increase engagement with the public and further enhance the marketplace of ideas. Over the last four years, the FTC has regularly held open Commission meetings, allowing the public to observe and speak directly with the FTC's Commissioners.

The Chair then turned to Costa Rica to further explain the constitutional importance of competition policy against the possible illegitimate use of state power.

Costa Rica first emphasised the connection between democracy and competition, recognising that monopolies or concentrated economic power pose a direct threat to democracy by enabling a few actors to influence policies, restrict access to resources and alter markets to their benefit. In 2019, Costa Rica radically transformed its competition framework, and the Commission for the Promotion of Competition (COPROCOM) gained the authority to enforce competition laws and penalise anti-competitive behaviours. Costa Rica shared a case involving the sugar industry, which has long been characterised by inefficiencies and monopolistic practices. COPROCOM's investigation revealed that a single actor controls the market, leading to inflated prices, reduced innovation and limited consumer choice. This structure disproportionately affected low-income households, but enterprises and economic agents also had to spend a larger share of their income on sugar. COPROCOM recommended reforms such as reducing tariffs, eliminating outdated regulations and opening market competition. Costa Rica highlighted another case involving public procurement, where anti-competitive practices had led to inflated costs and limited access for smaller businesses. COPROCOM ensured fair bidding processes, which improved efficiency and inclusivity by allowing small players to compete. To conclude, Costa Rica asserted that independence is a key element of its antitrust system and that it is crucial that the competition authority operates free from political influence.

The Chair then asked Paraguay to speak about the importance of transparency, another dimension of the indirect link between competition and democracy.

Paraguay began by providing a brief history of its competition law to contextualise the importance of transparency. Paraguay is a relatively young democracy that was ruled by a dictatorship until 1989. In 1992, the Constitution was enacted, with Article 7 protecting the free market and the liberty of companies to work as they see fit. In 2013, the competition law came into effect, with help from the OECD and other multilateral agencies. One of the main reasons for Paraguay's late adoption of competition law was the private sector's distrust of the government. However, through various means, Paraguay's competition authority Comisión Nacional de la Competencia (CONACOM) has increasingly gained the trust of both the public and companies. The first important factor has been the open selection process of CONACOM's officials. The second is that CONACOM's internal regulations have fostered transparency by publishing all of its activities on its website. CONACOM is required by law to publish annual reports, but it also hosts a national competition day where all of the authorities speak at a forum open to the public and the press. Since 2021, CONACOM hosts a competition for the general public to identify regulatory barriers. This has allowed the authority to recognise blind spots and strengthen its relationship with the public and the private sector. Paraguay concluded by stating that

competition is not possible without democracy and that this roundtable was important in light of rising tensions against democracy.

The Chair then invited the BIAC delegation to elaborate on its contribution, which recognises the links between democracy and competition but does not necessarily agree that market power leads to democratic risk.

BIAC first acknowledged the symbiotic relationship between competition and democracy before focusing its intervention on whether competition policy should factor in broader public policy in the interest of protecting the democratic process. While there are currently many challenges to promoting democracy that vary depending on each country, BIAC voiced its scepticism on adopting a competition-inspired analytical framework that could potentially stretch competition principles beyond what it deemed acceptable in terms of legal certainty and clarity. BIAC stated that undue influence on democracy is not limited to corporate behaviour, and that the political interests of governments and parties can contribute to democratic distortion. BIAC stated that it has long supported the independence of competition authorities and the need to protect them from political pressure, but BIAC expressed concern that competition authorities could be exposed to a risk of significant political interference if looking to address harms to democracy. Further, BIAC argued that market power is not a necessary criterion for corporate behaviour to affect the democratic process and named Cambridge Analytica and Telegram as examples of companies that are unlikely to reach the classic dominant threshold. BIAC concluded by saying that there are many harms to democracy that fall outside of competition policy analysis, which is why the competition law framework is not a particularly appropriate method for addressing such societal challenges that would be better handled by other institutional and regulatory frameworks.

The Chair then asked the expert speakers for additional comments.

Professor Teachout pointed out that, between 1980 and 2020, the US undermined the statutory framework of competition law by adding the consumer welfare standard, which could be considered as more of a slogan. The active undermining and directive to under-enforce existing statutes, thus ignoring the core democratic purpose that was embedded in the American statutory framework, led to the sense that the law was only being enforced in the service of a particular economic vision. Professor Teachout agreed with BIAC on the need for a rule of law and a clear set of standards deriving from the statutory framework, which includes that protecting democracy is a core part of competition law. In her view and from a US perspective, it is the 40-year removal of this understanding that has led to the undermining of competition law.

Professor Roberston recalled Professor Teachout's presentation about corporate influence on the academic space. Professor Robertson voiced her appreciation for the OECD's due diligence of asking her whether she held any potential conflicts of interest, and she encouraged competition authorities to do the same when interacting with academics as it could have important repercussions on how they perceive what they hear from those academics.

Dr. Deutscher stated that, when enforcing competition law, authorities need not necessarily focus on the specific direct impact of corporate power on the political process but by promoting competition, authorities may contribute to democracy directly or indirectly. Dr. Deutscher noted that, in all of the country interventions in the roundtable discussion so far, there has been a historical dimension where the protection of competition coupled with the process of democratisation. The second commonality is the substantive dimension to the interplay between competition and democracy, where economic freedom ensures inclusive competitive processes but also prevents privileges. The third

commonality is an important procedural or institutional dimension, pertaining to the independence of competition authorities, transparency and participation. Dr. Deutscher concluded that it is important to consider the trade-offs between independence and greater popular participation in competition policy.

Italy also commented, highlighting the research by Daron Acemoglu, who won a 2024 Nobel Award in Economics, on the direct causal link between democracy and economic growth. Italy concluded by stating that democracy is not only necessary for freedom but also for prosperity and GDP growth.

4. The Operationalisation of Competition and Democracy

The Chair transitioned to the third part of the discussion and invited the expert speakers to give their second presentations.

Professor Robertson focused on how competition policy could take into account democracy-related concerns.

- First, as democratic antitrust procedure, competition policy can bolster democratic procedure by strengthening due process and fundamental procedure rights while safeguarding the independence of competition authorities from corporate influence. Further, competition policy can disperse economic power and lead to more equally distributed power among citizens, and this is a crucial element of the democratic ideal. The democratic antitrust procedure and the dispersion of economic power rely on the competition dynamic to have a positive effect on democracy.
- Second, a more targeted approach would consider democracy within theories of harm or incorporating democratic values into the competition analysis, something that authorities may find difficult to adopt. For example, some merger control regimes assess a media merger for its effect on media pluralism, sparking questions about how other democratic values might be impacted and whether they fit into the legal framework.
- Third, the external benchmark approach can be used for including democracy-related considerations into competition assessments. This external benchmark is inspired by the European Court of Justice's (ECJ) ruling in *Meta Platforms Inc and Others v Bundeskartellamt*. The ECJ ruled that infringement of the General Data Protection Regulation can be considered by a competition authority when assessing unilateral conduct. Other regulations that safeguard aspects of democracy, such as the Digital Services Act and others, could potentially also be used as benchmarks.
- Fourth, pro-democratic remedies would see competition authorities negotiate remedies in line with safeguarding democracy. For example, if democratically problematic conduct arose from recommendation algorithms, then a potential remedy could be to implement an alternative.

Professor Robertson clarified that the four options could be used cumulatively or independently of each other, noting that while competition law should not be a panacea for the shortcomings of other policy areas, democracy-simulated configurations should be part of the competition policy debate. She pointed to the EU General Court's opinion in *Google Android*, where Google's abusive conduct harmed users accessing multiple online sources of information, and the General Court said that access would be "not only consistent with competition on the merits...but [was] also necessary in order to ensure plurality in a

democratic society.” To conclude, Professor Robertson reiterated the four options and noted that their usage would depend on the particular legal framework of operation.

Professor Teachout began by providing what she considered as two recent examples of significant democratic failures in the US and how they could have been prevented by a different competition policy strategy. Professor Teachout first recalled how Google built a monopoly in search and ad technology during a period when regulatory agencies were fairly lenient with mergers, and then Google (along with Meta and Amazon) used this to deplete the funding sources of news organisations, leading to the collapse of about half of the news organisations in the US. Research suggests that if Google and Meta were required to pay those news sources through fair negotiation, they would have had to pay between USD 12 to 15 billion a year, which would have funded those news organisations. These companies used monopoly profits to engage in strategies such as lobbying to forestall legislative action, and they achieved this at the federal level but failed in California, which decided to force the platforms to negotiate with news publishers. Google then engaged in an exit strategy by starting to remove all links to news sources in California until state lawmakers struck a deal so that the companies would only pay a small amount to keep news in California. This has also happened in Canada and Europe. Professor Teachout provided a second example of what she considered a potential democratic failure regarding Elon Musk’s purchase of Twitter in 2022 despite objections that the owner of such a substantial communications network should not be able to purchase another substantial communications network. The combination of these two networks have impacted policy in Ukraine, with Musk using the platform to join Ukrainian president Volodymyr Zelenskyy and US president-elect Donald Trump on a call. Such privatisation of foreign policy undermines democratic processes.

To protect against similar failures, Professor Teachout proposed two strategies: recognising the democracy mandate and adopting a prophylactic approach by enforcing laws rigorously. She argued that there should not be an efficiency exception to the enforcement of competition laws. Instead, there needs to be a clear structure of rules and approach to structural regulation that does not require courts or enforcers to engage in speculation of the abuses that may occur decades later. The key lesson from other areas of democracy law is to protect sovereignty and not allow trade negotiations to undermine the competition authorities’ ability to safeguard internal democracy. One of the key contexts of the 2024 American election was the radical distrust of the rule of law and distrust of the role of big companies in dominating public affairs. In addition to a direct democratic risk that was discussed earlier in the roundtable, there is a deeper democratic risk of loosening merger control and leading to a relaxed regulatory structure, which can lead to an authoritarian backlash.

Dr. Deutscher began by posing the question of how the model of the competition-democracy nexus, the responsiveness principle and the non-dictatorship principle could be implemented into competition law and policy. He noted that there are likely many ways of doing so depending on how far competition law goes in pursuing those two principles and where the competition regime is located on the continuum between the thin and thick notions of a competition-democracy nexus. Even competition policy based on the consumer welfare standard, more precisely defined as a consumer surplus standard, enhances democracy, at least in the sense that it ensures the responsiveness of markets to the interests of consumers. However, proponents of a more demanding, thicker version of the competition-democracy nexus will argue that competition law needs to go beyond the consumer welfare standard, and that there needs to be a greater emphasis on the non-dictatorship principle (the issue of concentration of power). They will also push for a more inclusive notion of the responsiveness of competitive markets to various interests, not only of consumers but also those of small businesses or workers.

Dr. Deutscher gave two historical examples of a thicker version of the competition-democracy nexus. The first example concerned the ordoliberal school in Europe and American antitrust paradigms arguing that, in order to promote the democratic nature of competition and safeguard against the concentration of power, there needs to be greater reliance on rule-like presumptions. There is a certain revival of such presumptions in the current policy debate, such as the 2023 US merger guidelines and the draft guidelines of the European Commission on abuse of dominance. However, some ordoliberals and members of the Harvard School antitrust paradigm went beyond rule-like presumptions, saying that certain circumstances call for an “unreasonable market power standard”, which allows competition law to intervene against the very existence of market power without any display of abusive or anti-competitive conduct. Competition authorities in Europe are looking into various instruments that would allow them to address certain situations of concentrated market power without needing to show concrete anti-competitive conduct. In short, over the last few years, competition law systems across the world seemed to move from a thin version of a competition-democracy nexus to a thicker version. Dr. Deutscher then described some policy interventions that might translate this idea into concrete policy practice, including the discussion of new competition tools, rule-like presumptions, intervention in labour markets and revival of structural remedies.

The Chair thanked the three expert speakers for explaining that 1) there are several tools that competition authorities can use, 2) authorities should be concerned about this issue and 3) this broader discussion has already commenced in debating standard of proof, per se approaches and by object approaches. The Chair then turned to the contributions, asking Poland to expand on its statement that market competition can be seen as part of a larger system of building a healthy democratic society and the three ways in which Poland’s competition authority can consider democracy-related issues.

Poland outlined three ways of featuring democracy in antitrust enforcement: priority setting, fining policy and adjustments in substantive legal tests. Priority setting helps with focusing more on cases that involve democratic interests or are related to markets which are important for democracy (such as media and social media). This is a simple yet important strategy because the budgets of competition authorities are quite limited. Poland compared this to the old principle that milk cartels are sued before caviar cartels, so free speech cartels should be sued before the frozen fish cartels. Fining policies could also be adjusted based on whether the case holds implications for democracy. If a case involves interests that may be important for the operation of democratic processes, the competition authorities should be able to use their discretion and impose higher fines. For example, if an undertaking is building links to a newspaper and it is considered under a standard theory of harm that this infringes on competition law, the authority should impose a higher fine than in an ordinary abuse of dominance case. Poland shared that, in 2024, its fining guidelines were updated so that the competition authority can now take into account the importance of the case from a democratic interest perspective (e.g., from perspectives of free speech, privacy or environmental concerns) when calculating the fine. The most controversial method of featuring democracy in antitrust enforcement regards substantive tests. This would include adopting structural rules or rule-like presumptions in enforcement, but this does not necessarily mean that the level of consumer welfare standard must drop; it would simply adjust the standard of proof in enforcement.

The Chair invited Mexico to elaborate on its contribution stating that competition policy is a key tool for addressing inequality and economic power, asserting that inequality broadens the gap of opportunity for people around the world. This leads to social unrest and threatens the very basis of democracy. The Chair asked how those notions have been integrated into the practices of Mexico’s competition authority Comisión Federal de Competencia Económica (COFECE).

Mexico began by reiterating COFECE's commitment to tackling inequality and other related issues like gender disparity. Mexico highlighted a case in 2021 where COFECE sanctioned female football clubs in Mexico for collusive agreements. Since the creation of Mexico's female football league in 2016, clubs capped the salaries of female players based on three categories. This agreement was replaced in the 2018-2019 season by another establishing that the maximum limit would be 15 000 Mexican pesos (about USD 800) and that only four players could earn above this amount. COFECE sanctioned the football clubs involved in the league for price manipulation since it prevented the clubs from competing to hire players and offer better salaries. This reality contrasted greatly with the fact that the best male player in Mexico earns up to USD 350 000, even when female players have won several tournaments. With this sanction, female players could benefit from salaries with an increase of up to 15%. Mexico acknowledged that this was not enough progress, but the decision has improved the salaries of female players.

The Chair asked Mexico a different question about COFECE losing its protected status from a constitutional perspective but receiving affirmation of its institutional independence.

Mexico explained that COFECE had lost its constitutional independence due to the government's policy change. COFECE is now part of the Ministry of Economy, but the reform still allowed COFECE to main its technical and budgetary autonomy, which would allow the authority to operate without political interference.

The Chair then transitioned to the topic of the media sector being a particularly sensitive topic for the relationship between competition and democracy, which was emphasised in the contribution submitted by Austria. The Chair specified that Austria's competition authority is legally obligated to pay special attention to the preservation of democratic values when assessing media mergers and asked Austria to elaborate on how they do so.

Austria explained that it has a mandate to ensure both fair markets and media diversity when it comes to media control. When reviewing media mergers, there is an extra layer of responsibility that recognises the important role that media plays in the functioning of democracy. In the 1990s, the Austrian legislature introduced media mergers as a separate merger category, thereby acknowledging their potential influence on media pluralism and independence. The Austrian competition authority must evaluate the potential impact that a notified merger has on plurality in the Austrian media landscape. There are media-specific thresholds for falling within the scope of merger assessment, which are more narrowly defined than usual merger thresholds. For instance, the turnover of media companies must be multiplied by a factor of 200. Additionally, when filing a media merger, the concerned undertakings need to submit exact and exhaustive information as to how the merger might affect media plurality. Austria's Competition Act refers to media plurality as the diversity of independent media companies that are not affiliated with each other and that ensures media coverage accounts for a variety of opinions. Austria provided a recent example that involved the acquisition of a significant stake in an Austrian media company. There were concerns that increased pressure on costs would lead to a reduction of local news coverage as well as weakening of financial and editorial independence of the respective media company. In the end, the merger was cleared with commitments that ensured a strong focus on local news content and the independence of the company's management, editors-in-chief and journalists.

The Chair then asked Greece to speak about a 2019 opinion on the functioning of competition in the national market of press distribution and its link to the interplay between competition and democracy.

Greece reiterated its belief that freedom of choice and opportunity for citizens are democratic pro-competition values, and that media plurality plays a key role in

safeguarding these values. Greece also has a special merger control regime for media, and has done much work on the diversity of media ownership through merger control and the issuance of this opinion on press distribution. Greece's national market of press distribution had two agencies until one closed, changing the market from a duopoly to a de facto monopoly, in which publishers holding a significant stake in the printed newspaper market were also shareholders. The market had seen a substantial decline in demand, but there was still a legislative obligation to distribute press throughout the Greek territory. The Hellenic Competition Commission (HCC) proposed several measures regarding the legal form of the press distribution agencies. The first proposal was to investigate whether they could function as a cooperative, which could guarantee competitive neutrality between publishers at the distribution stage. The HCC aimed to ensure equal treatment for all publishing companies involved in the distribution of their titles, and this would help safeguard pluralism of the press. The second proposal was the possibility to provide press distribution services through an auction process. The third proposal was to introduce a code of conduct which could be drafted and monitored by the HCC as a remedy and implemented by the press distribution agency. The fourth proposal was the establishment of a supervisory and regulatory authority for press distribution. The HCC's fifth proposal was that state institutions carry out the legal form of the press distribution agencies, as state institutions may enjoy a broader legitimacy in weighing the general interest.

5. Concluding remarks

The Chair then asked the three expert speakers to engage in a final round of comments.

Professor Teachout expressed her appreciation for Poland's contribution, which underlined the degree of limited capacity under which competition authorities are operating and the reality of making discretionary choices. Professor Teachout also expressed appreciation for the discussion specific to media and she elaborated on how AI being defined as a competition issue under the Biden administration in the US is quite substantial because AI is also clearly an area of radical structural risk and fragility, where the threat of exit may create unique problems with political power. Professor Teachout concluded by reinforcing the importance of structural rules, whether they manifest in the form of de facto separation of functions, divestiture or a prophylactic approach. Structural rules potentially limit the extensive and expensive process of fact finding and are important in combating the threat to the rule of law. They enable competition laws to be publicly legible, which is a key function of rule of law principles. As an American, Professor Teachout cautioned that, while the 2024 Mario Draghi report may encourage relaxed rules in Europe to achieve a vision of growing innovation, in her view such relaxed rules in the US ended up creating entities that attacked US democracy from within, undermining the US' capacity to be innovative and strong in the long term.

Dr. Deutscher gave his remarks, organised into three points. First, the relationship between competition and democracy was a fringe topic ten years ago, but is now central in light of ongoing developments which can be deemed negative for democracy. Second, the discussion about the relationship between competition and democracy concerns the ideological foundations of competition law, which do not provide a clear policy prescription but create a band of meaning within which policy debate can take place and where different policy interventions can be envisaged. Third, competition authorities must be careful when considering trade-offs between the non-dictatorship principle and the responsiveness principle.

Professor Robertson first responded to Professor Teachout's concluding remarks, specifically on competition authorities adopting a prophylactic approach. Professor

Robertson asked how authorities might approach ex-ante intervention and whether rigorous enforcement is sufficient. For example, the FTC sought to block the Meta-Within merger, but the judge could not be convinced of the theory of harm on potential competition. Professor Robertson asked whether the legal framework was equipped to deal with this even if rigorous enforcement existed. Professor Robertson then provided a more general observation on the discussion. Democracy has many facets, and if the competition community wants to incorporate it into policy work as policy makers, into enforcement as enforcers or into research as academics, then it may be useful to break it down into its various ingredients. This process of breaking it down may allow better insight on the more direct implications of democracy and related concerns for competition law and policy.

The Chair gave his concluding remarks. The Chair stated that the discussion examined various dimensions of the relationship between competition and democracy, including the historical, analytical and legal dimensions. Then the discussion flowed from the general relationship to the relationship in different dimensions such as the institutional, procedural and substantive dimensions, where each introduced notions of neutrality, transparency and independence. Finally, the discussion looked at the activities of competition authorities and how they were integrating some of those dimensions. The Chair observed that there was a focus on the media sector in many countries as related to the issue of competition and democracy but asked whether this focus was outdated due to the need for a wider concept of media, especially regarding data. The Chair stated that it was nevertheless an interesting example due to some authorities' obligation to assess pluralism. To conclude, even though the notion of democracy is quite abstract and conceptual, there are ways to establish its links to competition. The Chair thanked the expert speakers and everyone who contributed to the roundtable.