

## OTHER SUBMITTED PROPOSALS

### Competition Policy and Gender – Developing the Evidence

Following the tremendous success of our call for proposals for original applied research on the topic of gender and competition policy we have selected [7 projects](#) that will generate new evidence to inform the debate and help us to develop guidance on how to develop a more gender inclusive competition policy.

However, we also received a large number of other proposals that we were not able to select, but many of which could provide extremely valuable insight as we move towards preparing guidance. We very much hope that some of these projects will be pursued and we encourage anybody that is interested in helping the authors to pursue these projects to contact the authors. Where projects are undertaken and are completed by the summer of 2021, we will look to draw on the evidence provided in our guidance and in the conferences, workshops and publications that we will organise as part of this project.

Our next step will be to hold a workshop to discuss the [7 selected projects](#) on the 25<sup>th</sup> February 2021 so please do register [here](#). A selection of the other submitted projects are as follows:

AUTHORS	TITLE
Tonazzi, Alessandra <b>(AGCM)</b>	Gender Inclusive Competition Policy - The institutional perspective
Alcantara, Sunshine Therese Caboverde, Christopher Ed Gaduena, Ammielou <b>(Asian Institute of Management (AIM) Rizalino S. Navarro Policy Center for Competitiveness)</b>	Towards a gender-inclusive competition policy: Gender and its effects on regulatory burden and expansion strategies of SMEs in Metro Manila, Philippines
Kohlmeier, Gabrielle Banicevic, Anita	Designing an Effective Antitrust Compliance and Whistleblowing Program: Gender Inclusive Considerations
Kohlmeier, Gabrielle Banicevic, Anita	Building Better AI – The Role of Competition and Transparency
Kohlmeier, Gabrielle Banicevic, Anita	A Gender Inclusive Approach to Digital Competition
Kohlmeier, Gabrielle Banicevic, Anita	Create a Gender Competition Data Repository
Bergolo, Marcelo Galván, Estefanía <b>(Universidad de la Republica)</b>	Gender wage gaps and firms' market power
Andrea Von Chrismar Medina, Alejandra Vallejos Morales, Paula Hollstein Barría, Maikol Cerda Zavalla	Policies aiming to increase financial inclusion: the role of competition when the market discriminates women - Is more competition always preferable?
Natalie Harsdorf Anna Wurm Yara Hofbauer Peter Thyri	Female entrepreneurship as a driver of consumer welfare and economic growth – barriers and benefits

Marie-Thérèse Claes Andrea Romo Pérez Klara Kinnl <b>(Federal Austrian Competition Agency)</b>	
CNMC	Relation between gender wage gap and level of market competition
CNMC	Presence of women managers and market competition
Daño-Luna, Maribel Caliso, Rose Ann Camille <b>(University of Sydney, Asian Institute of Management (AIM) Rizalino S. Navarro Policy Center for Competitiveness)</b>	What is a “level-playing field” for women-owned SMEs to compete?
Facuse, Vanessa Montoya, Ana María Medel, Catalina Novoa, Valentina <b>Red Pro Competencia</b>	Gender And Agency Proficiency: The Importance Of Diversity
Campos Faria, Luisa de Paula, Ana Paula <b>CADE</b>	Gender Equality In Competition Authorities
<b>FCCC</b>	Language, Gender Norms and the “Pink Tax”: Understanding the source of gendered consumer behaviour
<b>FCCC</b>	Taboos, Gender Norms and Consumer Prices: Examining the existence of a price premium for products relating to gendered social taboos
<b>FCCC</b>	Culture, Gender Norms and Barriers to Women’s Business Ownership
<b>FCCC</b>	Gender Norms, Informal Finance and Business Failure in Developing Countries
Jessica Medina García	Have financial regulators ever thought about their impact in women economic dependency?
Maikol Cerda Zavalla, Hollstein Barria Paula, Alejandra Vallejos Morales, Andrea Von Chrismar Medina	New non-discrimination policy in the Chilean private health insurance coverage system - Will this policy really benefit women?
<b>IFT</b>	Do competition agencies have enough access to market information with a gender perspective?
Mary Catherine Lucey <b>(UCD Sutherland School of Law)</b>	Teaching competition agencies to dig deeper
Lütz, Fabian <b>(Université de Lausanne (UNIL))</b>	Towards cross-pollination between Gender Equality and Competition Policy
Maggiolino, Maria Teresa Zoboli, Laura <b>(Bocconi University, University of Warsaw)</b>	Support For Female Workers As An Antitrust Enforcement Priority
Meagher, Michelle Williamson, Beverly	Applying Gender as a Lens for Case Prioritisation

<b>(Inclusive Competition Forum)</b>	
Neves, Ines <b>(Univerity of Porto)</b>	Competition Law And Gender: Two Ingredients For Debate - Agreements on gender issues
Neves, Ines <b>(Univerity of Porto)</b>	Competition Law And Gender: Two Ingredients For Debate - Merger control
María López Ridruejo, Aguirre, Iratxe Simón, Marta <b>(Cuatrecasas)</b>	gender equality as relevent efficiencies
Long, Sarah <b>(Euclid law)</b>	The role of childcare in competitive markets
Abha <b>(SCLMR)</b>	Empowering women through Competition Law regime: A Case Study of working women in the organized sector in Delhi NCR region
Senden, Linda Leone, Italo <b>(Utrecht University)</b>	Towards a gender-proof conception of the consumer in competition law
María Catalina Gastelbondo Chiriví María Manuela Palacio Villarreal Felipe Augusto Diaz Sauza <b>(Colombian Competition Agency)</b>	Exploring a gender-based market failure in data-driven markets: How do biased algorithms impact competition and gender equality in data-driven markets?
Wilson, Joseph <b>(McGill University)</b>	Incorporating Equality / Non-Discrimination Principle In Competition Bureau's Work: Perspective From Canada
Amanda Athayde <b>(Women in Antitrust Brazil)</b>	Assessing gender issues in merger review and behavioural remedies
Koki Arai <b>(Kyoritsu Women's University)</b>	Gender, Competition, and Leadership Development Programs: Theory and Practice
<b>Zambia CCPC</b>	Competition Law and Policy - A Gender Perspective
Michelle Cleary, Pedro Gonzaga, Alyssa Neidhart, and Andrea Helfant <b>(Brattle)</b>	How does dynamic competition affect equality of opportunities across genders?
Michelle Cleary, Pedro Gonzaga, Alyssa Neidhart, and Andrea Helfant <b>(Brattle)</b>	Is discriminatory parental leave an entry barrier for women?

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# Gender Inclusive Competition Policy

## The institutional perspective

24 September 2020

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The (still limited) work already developed on gender and competition shows that distortions and discrimination on the basis of gender can negatively affect competition (see Competition Policy and Gender, by Chris Pike & Estefania Santacreu- Vasut, Concurrences. November 2019). Restrictions to women's participation in the economy – in the supply or demand side of markets – might reduce efficiency and competition policy might play an important role in addressing this issue. Some authors argue that taking a gender angle in choices made by the competition agencies might significantly improve not only the women role but markets' efficiency.

Competition agencies, however, have given limited focus, with very few exceptions, to the angle of gender in their activity and have seldom publicly discussed it. The lack of research and studies showing that gender discrimination does, in fact, affect competition might explain why. However, another possible, complementary, explanation might be that women are still relatively little represented, at the decision- making level, in competition agencies. In other terms, is the lack of focus on gender issues in competition policy a result of the lessen role that women cover in competition agencies?

If women are little represented in the decision process this might result in competition agencies less aware and less prone, on one hand, to prioritize enforcement interventions in markets that affect women welfare, and, on the other, to adopt their advocacy interventions against the restrictions that discriminate against women.

This is why I propose to look at the institutional angle of the problem. The line of research that I would like to propose should study whether the governance of the agencies shows to some extent distortion on the basis of gender and whether this affect the policy and enforcement choices of the agencies.

The research might be limited to competition agencies, or extended to regulators and international organizations working on competition. It should try to address the following questions.

- What is the role of women in competition agencies and regulators?
- Do women in institutions face the same problems, in terms of barriers to entry that women face, for example, as entrepreneurs or in some professions?
- Is the focus on gender of the activity of an agency affected by the weight that women have in the decision process?
- Are there good institutional frameworks or practices in some countries that could serve as a positive example?

The first step could be the collection of data on gender representation in competition agencies, for example, men/women ratios at different levels (officials, middle-management, senior management)<sup>1</sup>.

The research could then look at existing or proposed laws that provide for women to be represented at the senior management level (Example: Portugal Competition Authority where the Board must be composed of at least 33% of each gender, and the presidency must alternate between men and women).

Finally, one might look at the activity (enforcement and advocacy) that focused on gender sensitive issues and investigate whether there is a relationship with the governance structure of the agency.

See below a link to a research currently carried out by Italian Constitutional Law: researchers are investigating the regulatory and practical provisions through which the Italian legal system and the Member States of the EU have enhanced the principle of gender balance in the procedures for access and appointment to constitutional bodies and independent authorities. The survey does not focus solely on measures that may have been adopted with the specific objective of promoting gender equality but also on the effects that their introduction or, conversely, their failure to be adopted has had in terms of the composition of the bodies covered by the survey.

<https://www.federalismi.it/AppIOpenFilePDF.cfm?artid=43780&dpath=document&dfile=01072020200053.pdf&content=Equilibri%2Bdi%2Bgenere%2Be%2Bprocedure%2Bdi%2Bnomina%2E%2BTerzo%2Breport%2Bintermedio%2B%28luglio%2B2020%29%2B%2D%2Bstato%2B%2D%2Bpaper%2B%2D%2B>

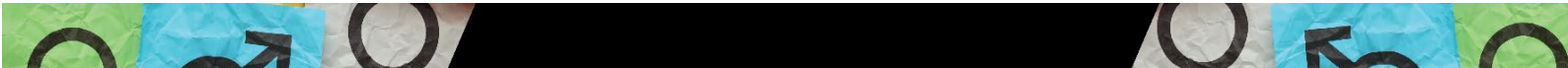
See also:

New Visions For Gender Equality 2019 Editors: Niall Crowley & Silvia Sansonetti

[https://ec.europa.eu/info/sites/info/files/saage\\_report-new\\_visions\\_for\\_gender\\_equality-2019.pdf](https://ec.europa.eu/info/sites/info/files/saage_report-new_visions_for_gender_equality-2019.pdf)

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<sup>1</sup> The OECD already collects some data on the internal organization of competition agencies that could be expanded to include gender ratios



# **Towards a gender-inclusive competition policy: Gender and its effects on regulatory burden and expansion strategies of SMEs in Metro Manila, Philippines**

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Entrepreneurs experience various types of entry barriers when opening their own business. These entry barriers are more pronounced when the sex or gender of the owner is factored in. Women in some countries face legal barriers to entrepreneurship wherein they are prevented from working in specific industries such as transportation, manufacturing, and construction (World Bank, 2018). In several countries, husbands are legally entitled to restrict their wives from working and opening a business, and in a minority of cases, married women cannot register a business (World Bank, 2018).

Beside legal barriers, women also face a double burden of reproductive and unpaid work in the household, where the latter is not recognized in society as being of economic value. Studies from around the world indicate that lack of childcare options and family care responsibilities severely limit women's economic choices (ILO, 2011). Furthermore, among other gender-related issues that women entrepreneurs face when joining the formal economy include discrimination; limited access to land, credit, skills, technology, mentors, networks, and information; high registration costs; high transaction costs; high taxes; and complicated start-up procedures (ILO, 2011; OECD, 2018; Santacreu-Vasut & Pike, 2019). Overall, these things are needed to be factored into the implementation of policies for small and medium enterprise development (ILO, 2011).

Not only does gender affect entry of female entrepreneurs but it also affects competition policy itself. Santacreu-Vasut and Pike (2019) wrote that gender differences may have an impact on the work of competition authorities and that competition policy may also have an influence on gender inequality. Overall, recognizing the impact of gender is especially important when crafting competition policy.

Considering this context, this study aims to find out the difference between male and female small and medium enterprise (SME) owners in Metro Manila, Philippines in terms of entry barriers and expansion strategies using logistic (logit) regression analysis. This study will look at the correlation of gender to the types of industries that SMEs engage in, the market expansion decisions of SME owners, and if there are gender related differences in the regulatory burden. This study will also attempt to look at whether industries with high female participations have more visible social networks and a more cooperative market environment. The analysis will follow the framework that has been presented by Santacreu-Vasut and Pike (2019). Ultimately, this study aims to contribute to policymaking in a developing country context by incorporating gender and the needs of women SME owners when crafting competition policies and regulations. We will use data from the 2017 Survey on Linkages of Small and Medium Enterprises with Big Businesses of the Asian Institute of Management Rizalino S. Navarro Policy Center for Competitiveness. This contains a sample of 530 SMEs from the National Capital

Region (NCR) in the Philippines. We will use variables such as sex of the owner, the entry barriers that firms face and the firm's expansion strategies.

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# **GENDER AND COMPETITION: PROPOSALS FOR FURTHER RESEARCH AND UNDERSTANDING:**

**Gabrielle Kohlmeier and Anita Banicevic**

## **Proposal #1: Designing an Effective Antitrust Compliance and Whistleblowing Program: Gender Inclusive Considerations**

We propose a two-step approach to further develop the research and data available concerning the optimal design of antitrust compliance programs using gender inclusive considerations.

a). Step One: Understanding When Antitrust Compliance Issues Arise

- Recent research has suggested that companies with diverse boards are less prone to financial restatements and fraud. Can the same be said for antitrust violations? Research on this issue could explore the possibility of utilizing existing databases used for recent studies of U.S. and Canadian companies for other recent studies.
- Conversely, what can we learn or observe about the characteristics of companies that have run into antitrust compliance issues? For example, are antitrust violations more or less likely to be engaged in by lower level or senior level employees? Are employees who engage in such conduct more or less likely to be male or female?

b) Step Two: Designing Optimal Antitrust Compliance Programs

- In step two, we propose using the empirical analysis in step one to drive further research in the area of designing optimal antitrust compliance and whistleblowing initiatives.
- We propose examining each of the elements of an antitrust compliance program in more detail and their relative importance (or influence) in the overall design of an antitrust compliance program. For instance, is non-retribution important or is potential compensation critical? Does the importance of various criteria depend on the individual (e.g., level of seniority of the employee, whether the employee is male or female?)

## **Proposal #2: Building Better AI – The Role of Competition and Transparency**

Algorithms are already widely in use and may be used to help make hiring decisions, evaluate candidates for personal or business loans, as well as engage in targeted pricing or advertising. While there is a recognition that algorithms are often used for pro-competitive purposes, there is also a recognition that such algorithms may, whether intentionally or not, perpetuate unfairness and gender inequality and ultimately may negatively impact competition.

With this proposal, we propose to start by canvassing initiatives that privacy and data authorities around the world are evaluating or planning in respect of AI - including any proposals for oversight or avoiding unfairness particularly as it relates to gender and racial inequality. Such an initial overview could serve as starting point for understanding the input and role that competition authorities may have going forward in advocating for AI that assist with, rather than harms, the goal of gender and racial equality. For example,



is there a set of “best practices” that can be used to better understand AI decision making, avoid perpetuating existing inequalities and ultimately lead to more competitive markets? Should there be flags for further assessment based on the data being used, how the data was collected and organized, who created the algorithms, who uses the algorithms and for which purpose, disparate impacts that result from use of algorithms?

As part of this proposal, we would also propose to consider whether there is a role for existing antitrust laws to address potential unfairness or discrimination that arises through the use of AI.

### **Proposal #3: A Gender Inclusive Approach to Digital Competition**

Antitrust decisions and decisions about data should be based on data. As part of this proposal, we suggest empirical research be collected or undertaken to create relevant, robust data sources to examine whether women use or value various tech services and products differently than men – and whether such differences affect the potential efficacy of proposed competition remedies or regulation.

For example, women and minorities may have a different quality adjusted price if they use services differently. Our proposal would undertake to examine (via the collection of empirical data or meta analysis of existing data) issues such as:

- Whether and how women (and girls) use social media differently than men (and boys) and than non-gender-conforming people? Some studies outside the competition context have been conducted in this area; a rigorous meta analysis could be done to identify patterns for use by competition enforcers and policymakers.
- Are there differences between genders in the value placed on these platforms and the data shared or accumulated by such platforms? Are these differences associated with how the services are used differently?
- Are there differences between genders in e-commerce usage (differences in types of e-commerce platforms used, price sensitivity, elasticity of demand, willingness to substitute with other e-commerce or physical commerce)?

Are there differences between genders in privacy and security concerns, or the likelihood of such concerns to impact their use of a particular product or service? The collation of this data could be used to better assess remedies (both the need for remedies and how different types of remedies may impact genders differently) as well as further our overall understanding of the functioning of various markets.

### **Proposal #4: Create a Gender Competition Data Repository**

Track data sources that break out data by gender for use by competition officials in assessing competitive impact driving enforcement and regulatory decisions and analyses.

Creating a centralized body of inclusive data sources (for gender and beyond) reduces the burden on regulators to find data sources that can be used to conduct gender based assessments and other gender inclusive competition analysis and decision making.

# Gender inclusive competition policy – Developing the evidence

## Research proposal: Gender wage gaps and firms' market power

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### 1. MOTIVATION AND RELEVANCE

Sizable gender gaps are a persistent characteristic of both developed and developing countries. Today women still participate less in the labor market than men, and when they do participate, they get worse outcomes (OECD, 2018 and ILO, 2017). Moreover, contrasting with persistent advances in women's education, labor market experience, and occupational upgrading, the narrowing of the gender pay gap has slowed down in recent decades (Goldin, 2014; Blau and Kahn, 2017; Gasparini and Marchionni, 2017).

The first step to develop policies aimed at gender equality is to identify the underlying causes of the remaining gender disparities and characterize the multiple channels through which they affect female labor market outcomes. In this context, the relationship between gender and competition policy remains largely unexplored (see Santacreu-Vasut and Pike (2019) for a review). The economic theory states that in competitive labor markets, wages are determined by market-level supply and demand factors rather than by the wage-setting policies of particular firms. However, the recent availability of data that merges information on workers and firms, has given rise to a growing literature that provides empirical evidence that firm-specific pay premiums are an important source of gender wage inequality. Using longitudinal data on Portuguese workers matched with income statement information for firms, Card et al. (2016) show that the wages of both men and women contain firm-specific premiums that are strongly correlated with simple measures of the potential bargaining surplus at each firm. They show that about one-fifth of the gender wage gap is explained by the combination of women being less likely to be employed at firms that pay higher premiums to either gender (what they call the sorting effect) and the fact that women receive only 90% of the firm-specific pay premiums earned by men (the bargaining effect). Following this seminal work, evidence that women are less likely to be employed at high-paying firms and that they are offered worse wages than men within firms has been found for Italy (Cassarico and Lattanzio, 2020) and Germany (Bruns, 2019).

A less explored aspect is the relationship between competition and the market power of certain firms to discriminate by paying higher premiums to male workers. As theorized by Becker (1957) and Arrow (1973), competitive forces should reduce or eliminate employer discrimination in the long run because the least discriminatory firms, which hire more lower-priced female labor, would have lower costs of production and should drive the more discriminatory firms out of business. A possible explanation of why this does not seem to have occurred is that discrimination is located in sectors of the economy that are not competitive. For example, previous evidence by Black and Strahan (2001) suggests that firms with greater market power exercise greater discrimination against women. They find that after a deregulation of the U.S. banking sector that increased competition, the ability of individual

employers to discriminate women by sharing their rents disproportionately with male workers decline, while women's share of employment in managerial positions increased. Related with this, recent work has considered the role of monopsony in explaining the gender wage gap. Using methods of survival analysis and linked employer-employee data set for Germany, Hirsch et al. (2010) find that at least one-third of the gender pay gap might be wage discrimination by profit-maximizing monopsonistic employers. Monopsony could help to explain how discriminatory gender wage differences arise and persist if employers wield greater monopsony power over women than men.

## **2. RESEARCH PROPOSAL**

The objective of this research proposal is to use a rich database linking firms' and workers' information for Uruguay to investigate the still largely unexplored relationship between the role of competition and that of firm's pay policy in hindering or reinforcing gender inequality in the labor market.

This proposal is based on a large dataset coming from social security administrative records provided by the Social Security Administration in Uruguay (BPS). These data provide information on labor market histories of formal workers in Uruguay since 1996, which is merged with firm-level information.

Building on Card et al. (2016)'s methodological approach we propose first, to analyze the role of firm-specific premiums in explaining the gender wage gaps. Like in AKM's (Abowd et al. 1999) model, their methodology includes fixed effects for individual workers and fixed effects for employers that measure the wage premium paid by each firm relative to some reference firm or group of firms. Then, we will decompose these gender-specific firm wage effects, to measure the relevance of the sorting and bargaining channels and explore gendered switching behavior toward firms with more generous pay policy as a driver of male's sorting into higher pay firms. On a second step, we intend to investigate the way in which market power for firms to set different wages by gender is related with competition. The literature suggests that the monopsonistic framework could explain how discriminatory gender wage differences arise and persist if firms wield greater monopsony power over female workers. For this to hold, women's supply of labor to the firm must be less wage elastic than men's. Although women's labor supply is more elastic than men's at the market level, it might be less elastic than men's at the firm level, giving rise to steeper labor supply curves for women to the firm. Reasons for this could be different preferences over nonwage job characteristics and a higher degree of immobility (Hirsch et al., 2010). For example, women's job moves might be less motivated by pecuniary considerations, but to a larger extent by the job's location (e.g., near a school) or the working hours offered (e.g., the possibility of working part-time). Then, profit-maximizing firms may take advantage of gender-specific differences in supply elasticities by exercising wage discrimination, that is, by paying different wages to women and men.

With this in mind, we propose to analyze the gender gaps in firm's pay premiums for different sectors of the Uruguayan economy, and then estimate female's and male's wage elasticities in labor supply to the firm to test the hypothesis that those sectors with the highest gender gap in pay premiums are those in which firms exercise greater monopsony power over women. If we find that those firms with greater market power are those with higher ability to discriminate by hiring less women or paying higher pay-premiums to male workers, then

competition policy might have a role to play in addressing gender wage gaps in the labor market. In this sense, using gender lens can improve the effectiveness of competition policy and may contribute to the fight against gender inequality.

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# New non-discrimination policy in the Chilean private health insurance coverage system

## Will this policy really benefit women?

By Maikol Cerda Zavalla, Hollstein Barria Paula,  
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### INTRODUCTION

From the 1<sup>st</sup> of April of this year, women should pay for their health insurance plans in the same way that men do in Chile. This policy is claimed to tackle gender discrimination in the Chilean private health system.<sup>1</sup> The Superintendence of Health (SH) hopes to achieve solidarity between men and women through the homogenization of the table of factors.<sup>2</sup> The former Minister of Health, Jaime Mañalich, claimed that this new policy will imply that a 35-year-old woman will now pay 50% less for an average plan.<sup>3</sup> Indeed, by September of 2020, the SH released figures showing that ‘women now pay \$45,900 Chilean pesos [57,38 US dollars] less than the amount they used to pay in March’ (before the new normative was enacted).<sup>4</sup>

The non-discrimination policy was introduced solely in the private scheme used by only 18% of the Chilean population. The aforementioned is important since one of the key features of the Chilean social-security system is its segmentation. Mandatory health contributions can be paid to either of the two health insurance systems that operate in parallel: i) the National Health Fund (FONASA), which is a mixed funded health insurance scheme,<sup>5</sup> and; ii) the private health insurance institutions (ISAPREs). Under the ISAPRE scheme, contributors are covered by the health plan chosen according to the individual affiliate’s risk and payment capacity.

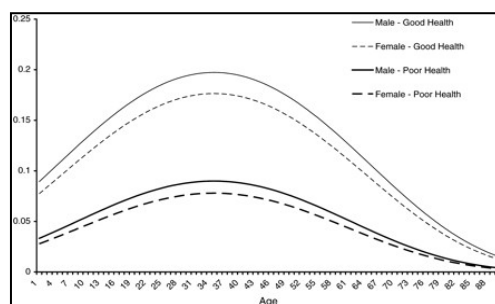
The duality of the system creates obstacles to greater equity. Higher-income individuals tend to enrol in ISAPRE’s, especially in their early stages of adulthood. On the contrary, most people in the four lower quintiles are affiliated to FONASA. The existence of FONASA, a last resort solidarity-based insurer, combined with the freedom of the ISAPREs to engage in risk selection, has made access to proper health care a function of income and disease probability in Chile. This combination of public and private schemes harms the entire health system’s equity since ISAPREs offer a better network of health care providers while FONASA tends to a higher proportion of low-income individuals with greater medical risks.<sup>6</sup> This inequity has damaged women mainly, especially those of child-bearing age and the elderly, as shown in Figure 1.

### THEORETICAL UNDERPINNINGS

Promoting competition in markets that suffer from market failures, such as the health insurance one in Chile,<sup>7</sup> may compel competition authorities to consider whether potential substitutes, such as a public health insurance scheme, are already present as alternatives. Enhancing competition in such markets and promoting the entry of new health insurance companies may

have potential effects on the functioning of these alternative solutions.<sup>8</sup> This may lead to unintentional consequences for access to good quality health care for most vulnerable women, due to, for example, cream-skimming strategy and risk selection incentives that ISAPREs use.<sup>9</sup>

**Figure 1: Predicted probability of being in an**



ISAPRE  
Source: Agostini, Saavedra, Willington (2011) p 214.

### QUESTION AND RESEARCH HYPOTHESIS

This research aims to enquire into the non-discrimination policy in the private health insurance system, questioning whether it will benefit all women in Chile. If not, which groups of women are being favoured and which ones being harmed? Asking such questions, we could also examine: what are the considerations for a Competition Agency when we have verified failures in a segmented market? And how can these considerations be modified through the lens of gender analysis? The hypothesis that will be tested is: The non-discrimination policy in the private health insurance system will increase cream-skimming and risk selection policies at the cost of vulnerable women in Chile.

<sup>1</sup> This policy was implemented through 'Circular IF/N° 343' of the Superintendence of Health.

<sup>2</sup> An indicator that is used to calculate the final price of a health plan.

<sup>3</sup> Information available in Spanish at: <https://www.minsal.cl/gobierno-anuncia-fin-de-las-desigualdades-y-discriminacion-de-la-mujer-en-el-sistema-isapre/> [accessed on 28th of September of 2020].

<sup>4</sup> Information available in Spanish at: <http://www.supersalud.gob.cl/prensa/672/w3-article-19656.html> [accessed on 28th of September 2020].

<sup>5</sup> With health contributions paid by affiliates and public funds.

<sup>6</sup> Economic Commission for Latin America and the Caribbean (ECLAC) Shaping the Future of Social Protection: Access, Financing, and Solidarity. Montevideo, Uruguay, 20 -24 March 2006, p. 92.

<sup>7</sup> See Claudio A. Agostini, Eduardo Saavedra, Manuel Willington, Collusion on Private Health Insurance Coverage in Chile, *Journal of Competition Law & Economics*, Volume 7, Issue 1, March 2011, Pages 205–240, <https://doi.org/10.1093/joclec/nhq023>.

<sup>8</sup> 'The interplay between not for profit and for-profit players is likely to be worth considering before the introduction of policy changes in such environments.' DAF/COMP/GF (2018)4, page 32.

<sup>9</sup> Economic Commission for Latin America and the Caribbean (ECLAC) Shaping the Future of Social Protection: Access, Financing, and Solidarity, Montevideo, Uruguay, 20 -24 March 2006, p. 92.

## **METHODOLOGY**

According to estimations made by the SH, the price of female health insurance plans has decreased by 29,7% and 48%, on average, for a 25 and 30-year-old woman, respectively, during the six months following the implementation of the policy. Similarly, the price dropped by 32,8% for a 30-year-old woman with a two-year-old dependent. Based only on these aggregate estimations, however, we cannot conclude whether the policy improved competition among the ISAPREs (an oligopolistic market with six firms) for enrolling women by offering better conditions and plans at lower prices. Neither can we make statements regarding the substitution effect (churn rates) between FONASA and ISAPREs. In other words, we cannot study how the policy encourages affiliates to leave or enter the private health scheme, and how these variations impact on the equity of the Chilean health system as a whole.

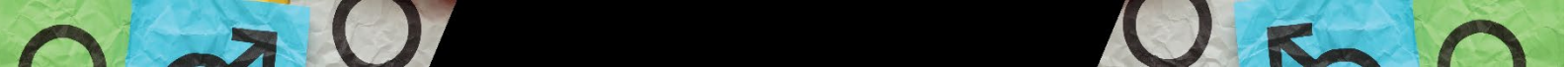
To perform a more in-depth microanalysis and capture these potential effects, we will evaluate the non-discrimination policy using a *diff-in-diff* approach which will let us, first, quantify the observed total variation in the number of affiliates and dependents *intra* ISAPREs before and after, grouping consumers according to their age segment, household income quantile, and other socioeconomic variables. Second, we propose to estimate the new churn rates between the private health insurance companies and FONASA and to compare them with ex-ante switching tendencies. Here, again, if we want to study how the policy impacts on the fairness of the market, we must analyze the heterogeneous effects on women according to their economic status.

Lastly, we expect to complement our analysis with information related to health plan prices, the number of beneficiaries by area, and the structure and diversity of plans offered by the ISAPREs. The inclusion of this data in the analysis will let us have a global picture of the policy's effects because ISAPREs can competitively respond to the new changes using different strategies that involve these variables.

## **RESEARCH RELEVANCE**

This study will be, to these researchers' best-knowledge, the first work that collects this information and examines the impact of this new gender policy, assessing its impact -if any- in competition within the private scheme. This, considering the combination of public and private components, will show if there are potential unintended crossed effects to the detriment of vulnerable women.

One of our concerns in this project is that we would not be able to capture all long-term dynamics and effects caused by the implementation of the gender policy. The recent application of it, together with the presence of market frictions, especially those related to switching costs and asymmetries of information, may make the short-term analysis incomplete. Depending on the timing, future research would take a different approach to capture a global picture and evaluate more accurately the impact of the new rule.



# **Female entrepreneurship as a driver of consumer welfare and economic growth – barriers and benefits**

**Natalie Harsdorf, Anna Wurm, Yara Hofbauer, Peter Thyri, Marie-Thérèse Claes, Andrea Romo Pérez, Klara Kinn  
(Federal Austrian Competition Agency)**

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## I. INTRODUCTION

The daily practice within the competition authority suggests that women are still underrepresented at the managerial level in firms and as business owners. In spite of the fact that a large body of literature notes different positive effects of female leadership, in Austria, women constitute only 8% of CEOs and they represented 23% of board members in 2019<sup>1</sup>. The same is true for startups: The European Commission illustrates that only 34.4% of self-employed individuals and 30% of startup entrepreneurs in Europe are female, despite women constituting 52% of the total European population.<sup>2</sup> Women figure more prominently in the service industry (particularly social and health services), which belongs to the least capital-intensive industries and is not particularly well known for their innovative capacities. Only 8.3% of patents in Europe are awarded to female entrepreneurs. Similarly, women own only 20% of businesses that started with venture capital earlier in the 21st century.<sup>3</sup> The European Commission identifies *access to finance, access to information, training, and access to networks* for business purposes, and reconciling businesses and family concerns as the main drivers of these particularly pronounced gender gaps.<sup>4</sup>

The Austrian Competition Authority<sup>5</sup>, in particular, questions possible biases when conducting competition analysis. As per observation, market surveys are predominantly responded to by men. The reason for this may be that women are underrepresented in leading positions or as founders in the markets investigated, particularly in innovation-driven industries and start-ups. From our experience, relatively strong players with legal representation approach competition authorities more often than weaker actors, who face substantial economic and/or legal barriers in judicial relief. In focusing more strongly on giving a voice to market entrants or start-ups where women may not be equally represented, competition authorities can gain a more diverse picture of the markets actual situation and learn more about potential barriers to entry and competitive problems.

This research aims to investigate the link between female entrepreneurship, innovation and economic growth with a particular focus on the role of competition policy as a safeguard of access and fairness in the competitive process.<sup>6</sup>

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<sup>1</sup> retrieved on August 25 from <https://wien.arbeiterkammer.at/frauenmanagementreport>

<sup>2</sup> retrieved on August 11, 2020 from [https://ec.europa.eu/growth/smes/promoting-entrepreneurship/we-work-for/women\\_en](https://ec.europa.eu/growth/smes/promoting-entrepreneurship/we-work-for/women_en)

<sup>3</sup> European Commission, DG Enterprise and Industry, Evaluation on Policy: Promotion of Women Innovators and Entrepreneurshi. 2005

<sup>4</sup> retrieved on August 11, 2020 from [https://ec.europa.eu/growth/smes/promoting-entrepreneurship/we-work-for/women\\_en](https://ec.europa.eu/growth/smes/promoting-entrepreneurship/we-work-for/women_en)

<sup>5</sup> Austria will be used as a case study for this work.

We aim to contribute to and expand this growing body of research and offer insights and strategies that competition authorities can implement when promoting fair competition and advocating for policy and regulatory frameworks that allow for inclusive and sustainable growth in order to increase economic welfare. Moreover, we are curious to improve the understanding of characteristics of the market of access to venture capital for the purposes of merger control and abuse cases.

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## II. QUESTIONS

By looking at European start-ups, this research will focus on the following underlying research questions:

1. How do explained and unexplained differences impact female founded start-ups' access to funding?
2. Does improved access of female entrepreneurs to open and competitive markets increase consumer welfare and economic growth?<sup>7</sup>

The interdisciplinary project team<sup>8</sup>, consisting of lawyers, economists from the *Austrian Competition Authority*, and scholars working in the fields of gender studies, intercultural communication, diversity management, discriminatory treatment, and leadership, is convinced that leaving potential for innovation and competition untouched is detrimental to *economic growth*. Thus, we need to work more actively on uncovering issues that have so far mostly been untreated. The relationship between *gender and competition as a prerequisite for consumer welfare and economic growth* is an especially underrepresented aspect in both the current academic and the public debate. As this bias does most likely lead to pronounced inefficiencies, we are eager to participate in the Call for Proposals by the Canadian Competition Bureau.

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<sup>6</sup> See e.g. *Wallis*, *Why competitive markets aren't self-actuating: the political economy of limited access*, in Brousseau/Glachant (ed.), *The Manufacturing or Markets* (OUP 2014), p. 149.

### III. QUESTIONS

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### IV. LITERATURE REVIEW

On a public policy level, the position that female creativity and entrepreneurial potential are an under-exploited source of economic growth and jobs is relatively well established, at least on paper.<sup>9</sup> Thus, a majority of OECD countries have at some point aimed at improving gender equality in diverse spheres of public and economic life.<sup>10</sup> Furthermore, gender equality constitutes one of the main social development goals of the United Nations.<sup>11</sup> This is supported by recent research that shows how overall diversity<sup>12</sup> in leading positions may foster market performance and drive innovation by establishing an environment that encourages “thinking outside the box” and finding innovative solutions.<sup>13</sup> Niebuhr (2010) finds that cultural diversity positively affects R&D activity. Similarly, Nathan and Lee (2013) find that companies with diverse management are more likely to introduce new product innovation. Ostry et al. (2018) show empirically that gender diversity on corporate boards and in leading positions foster economic gain.

Despite the link between gender diversity, creativity, and innovation, women still seem to have little access to funding and face only limited opportunities to succeed as entrepreneurs in the business world. Increasingly, research tries to elaborate on the reasons for the gender-based funding gap. For instance, Kuschel et al. (2017) qualitative study demonstrated that women start-up founders' capital raising success is linked to business characteristics, networking in the entrepreneurial ecosystem, and individual characteristics. In connection with the latter, women in this research recognized the barriers that young female founders with less experience find to raise capital in certain industries. Lack of experience may affect men similarly.

Furthermore, previous research has found that female co-founders face prejudiced assumptions when presenting their business ideas. In some cases, investors tend to ask

technical questions to their business' male co-founders, whereas women are assumed not possess that knowledge. It has also been reported that several male investors have little understanding of the products and services that women-founded businesses market to other women (Abouzahr et al., 2018).

Further, Kanze et al. (2018) found that the gender gap in start-up funding may be related to the questions that venture capital investors ask to entrepreneurs. The authors noted that female entrepreneurs are asked prevention-focused questions, and are implicitly expected to demonstrate they can execute a safe return of capital to the investor. On the other hand, male entrepreneurs are asked promotion-focus questions and are expected to show the opportunity can grow. The authors suggest that this situation aggravates the gender gap by inciting female entrepreneurs to "position their start-ups as 'playing not to lose' and male respondents to position themselves as 'playing to win'" (Kanze et al., 2018, p. 603).

The striking differences across racial and ethnic groups trying to access capital has also been reported. A study found that Black entrepreneurs obtain less financial capital in the early years of their firm's operation than white entrepreneurs (Fairlie et al., 2016).

Another study showed that some Latin American women trying to raise capital in the US to secure funding for their start-ups perceived that some investors are discouraged by their cultural background (Kuschel et al., 2017).

In general, women may have trouble in attracting venture capital due to potential differences in education or experience. However, the pronounced gender gap in entrepreneurship suggests that there may be unobserved factors or discrimination driving the gender gap in business. Econometric techniques to decompose gender gaps into an explained part (education, experience, age, etc.) and an unexplained part (discrimination) are widely used to estimate gender wage inequalities<sup>14</sup>. Yet, there exists little empirical evidence that elaborates thoroughly on the sources of differences in the access to funding for women who start-up firms.

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<sup>7</sup> For this question we are looking at a mere correlation since causal inference cannot be established without quasi-experimental econometric techniques.

<sup>8</sup> A detailed description of the authors can be found in section VIII.

<sup>9</sup> retrieved on August 11, 2020 from [https://ec.europa.eu/growth/smes/promoting-entrepreneurship/we-work-for/women\\_en](https://ec.europa.eu/growth/smes/promoting-entrepreneurship/we-work-for/women_en)

<sup>10</sup> see <https://www.oecd.org/gender/ongoingwork/> for the OECD's efforts

<sup>11</sup> see <https://sdgs.un.org/goals> for the United Nations' Social Development Goals

<sup>12</sup> not only restricted to gender but also other aspects such as nationality etc.

<sup>13</sup> retrieved on August 10, 2020 from <https://hbr.org/2013/12/how-diversity-can-drive-innovation>

## V. DATA

As venture capital is crucial for start-ups, biases that emerge from discrimination in funding have severe consequences for diversity in the entrepreneurial landscape. Gender diversity and the competitiveness of firms led by women are crucial as they are an essential driver of innovation and therefore beneficial to competition and economic growth. Further, they are more likely to meet the requirements and needs of women, who are among the most affected groups in the current downturn.

The causal chain under scrutiny is illustrated in Figure 1 in the Appendix. In order to fight these biases, society thus needs to learn more about their causes and consequences. We therefore propose to investigate the gaps in the access to capital thoroughly by taking into account explained and unexplained differences. Explained differences may include factors such as experience, education, industry, capital intensity, professional networks, etc. By assessing what part of the difference in funding is unexplained (for instance by using the Blinder-Oaxaca decomposition method<sup>15</sup>), discrimination against female founders will be uncovered.

The data requirements for this kind of analysis are high, which could be challenging. We would require data about applications for funding that contains individual and project specific information. It is also relevant to conduct this research on a broader than national scale and to investigate both private and public sources of funding for startups. As a starting point we propose to use Austria as a case study. Moreover, and with the aim of not homogenizing female founders' experiences, this study will work with an intersectional framework.

## VI. METHODS

A mixed methods study will be conducted comprising (i) a survey that shall focus on variables such as gender, age, migration, networks, role models, education, (ii) and semi-structured open-ended interviews with women who start-up firms. The latter will enable us to have in-depth insights into the funding processes followed by them and the obstacles they faced.

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<sup>14</sup> The so-called Blinder-Oaxaca Decomposition. For Austria, see, e.g. Böheim, R., K. Himpele, H. Mahringer, and C. Zulehner (2013a). The distribution of the gender wage gap in Austria: evidence from matched employer-employee data and tax records. *Journal for Labour Market Research* 46(1), 19–34.

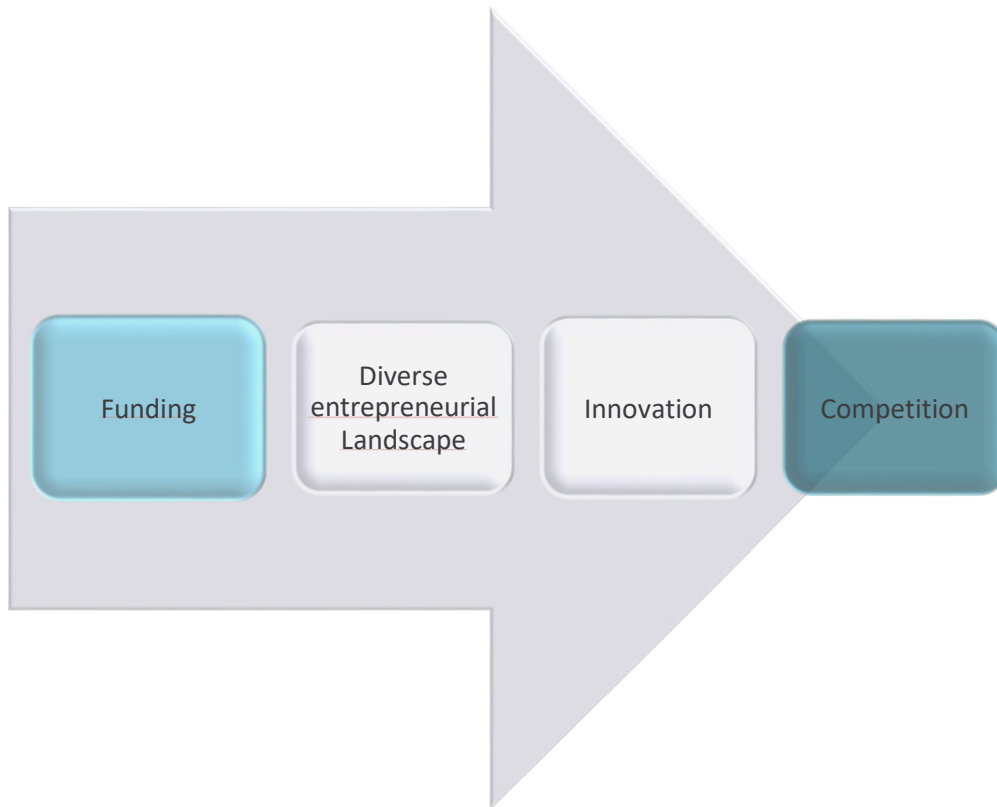
<sup>15</sup> Blinder, A. (1973). Wage Discrimination: Reduced Form and Structural Estimates. *The Journal of Human Resources*, 8(4), 436- 455. doi:10.2307/144855 &

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## VIII. APPENDIX

**Figure 1:** Causal Chain from Funding to Competition



## IX. AUTHORS' PROFILES:

**Dr. Natalie Harsdorf** is Acting Managing Director and Head of Legal of the Federal Austrian Competition Authority. She is co-founder of the Women Competition Network Austria (<https://www.wcna.at/>) and member of the OECD Competition Bureau as coordinator towards UNCTAD. She studied Law in Vienna, Dublin and at the College of Europe in Bruges.

**Anna Wurm** works as a competition economist within the Austrian Competition Authorities. During the course of her studies and career she has so far focused on the fields of industrial organization and labor economics. At the ifo institute in Munich she did empirical research on inequalities of opportunity regarding socio-economic background and gender.

**Dr. Yara Hofbauer** works as case handler at the Federal Austrian Competition Authority and founder of the consultancy upright ([www.upright.at](http://www.upright.at)) which supports companies to create a discrimination-free workplace especially regarding gender-based discrimination. In the course of her studies of law and political science in Austria, Spain and the US, she has also put her academic focus on gender-based violence and social justice.

**Dr. Peter Thyri** is the founder of PETER THYRI Competition Counseling&Research, a specialized law firm integrating legal practice and academic work in Competition law. Peter holds degrees from the Universities of Vienna and Rome "La Sapienza", New York University, the European University Institute and the University of Salzburg. He practiced with leading international law firms in Brussels and Vienna and held a full-time teaching position at the University of Salzburg. Peter now reads EU competition law at WU University of Economics and Business and the University of Vienna as well as at various master programs in Austria and elsewhere. His publications include a standard treatise on European law, a price-winning book on Austrian Antitrust Enforcement, as well as more than 100 academic pieces on EC, EC-competition and State-aid law.

**Professor Dr. Marie-Thérèse Claes** is professor at and head of the Institute for Gender and Diversity in Organizations at the WU University of Economics and Business in Vienna Austria. Before that she was professor of International and Cross-cultural Management at Louvain School of Management (LSM, University of Louvain Belgium) and ICHEC Brussels Business School. In addition, she holds guest professorships at several other universities in Europe, Asia and the United States of America, was Dean of the Faculty of Business at the Asian University Thailand, and Director of the Executive MBA at LSM. She is also consultant and coach for relocation, diversity management and global leadership. She has worked as a consultant to various companies and is a former President of the Society for Intercultural Education, Training and Research (SIETAR Europa) and the European Women's Management Development International Network (EWMD).

**Andrea Romo Pérez** is an Assistant Professor at the Institute for Gender and Diversity in Organizations at the Wirtschaftsuniversität Wien (Vienna University of Economics and Business). She was a lecturer in the Intercultural Conflict Management masters program



at the Alice Salomon Hochschule (Berlin). In 2018–19, she was a Postdoctoral Research Fellow at the School of Social Work and Social Welfare of the Hebrew University of Jerusalem. She holds a PhD in history from the Freie Universität Berlin, and a Master's degree in Public Management from Potsdam University. She has conducted research on police-citizens' relations, female offending, police corruption and sexual misconduct, intersectional discrimination, policing and diversity, and gender-based violence. Her work appears in high impact international journals, such as *Police Practice and Research*, *Feminist Criminology* and *Policing and Society*. Outside her academic life, she has worked in the print media and Ecuador's public sector.

**Klara Kinnl** is a pre doc Teaching and Research Associate at the Institute for Public Sector Economics at the Vienna University of Economics and Business. Adding to her master's in economics at the University of Vienna Klara is close to finishing her master's in Gender Studies. Having worked and interned at several Austrian institutions such as the Vienna Chamber of Labour, Main Association of Social Securities, the Vienna University of Economics and Business, the University of Vienna as well as the Austrian National Bank Klara got to know the public sector from various perspectives. Klara's research interests include public economics, economic policy and applied microeconomics and her thesis will focus on public policy including taxational, environmental and gender aspects.

## Gender inclusive competition policy – Developing the evidence

By CNMC

The OECD has launched a Call for Proposals to develop an understanding of how, in practice, competition agencies, and competition policy more generally, can make operational, analytical or policy changes to create a gender inclusive competition policy. The Call asks for proposals and ideas for original applied research on the topic of gender and competition policy.

The CNMC submits the following two proposals, prepared by the Unit of the Chief Economic Advisor:

### A. Relation between gender wage gap and level of market competition

Competition policy seeks to create fairer and more open markets in which all participants have equal opportunities. Competition agencies base their decisions on the consumer welfare standard and try to enhance consumer welfare through their decisions and policy actions. From this perspective, it can be assumed that consumer welfare cannot be maximized in markets that are unfair or subject to avoidable inequality. As gender inequality is one type of avoidable inequality, markets in which it is observed could be expected to be less competitive. Therefore, those would be the markets in which competition authorities should focus more. Although this hypothesis seems valid, it would be interesting to provide quantitative data that would support it.

With that idea in mind we propose to **assess whether the gender wage gap is actually higher in less competitive markets**. We consider that the wage gap is an appropriate proxy for gender inequality and data is readily accessible for many countries. The key issue would be to decide how to assess the level of competition in different markets, which is also very relevant for other lines of research. To decide which markets would be less competitive, we could focus, among others, on those markets in which there are a more competition authority decisions, sectors that show wider profit margins or higher barriers to entry. We would analyse the wage gap in those markets and then compare it to the wage gap in more competitive markets.

If the results show that markets with greater gender wage gaps are indeed those that are less competitive, competition authorities could focus more resources in monitoring those markets. Moreover, when assessing the impact of the decisions made by the competition authorities, they could include their indirect contribution to the reduction of the gender wage gap.

### B. Presence of women managers and market competition

As most women may suffer certain unfair or discriminatory situations throughout their careers, they might probably be more aware of the necessity of having more fair, open and equal markets, and therefore of the need for competitive markets that would enhance equality in the markets while increasing consumer welfare. As a consequence, we could

expect that if there are more women in decision-making positions, *ceteris paribus* the companies would be less prone to commit competition infringements.

To assess whether this hypothesis is true, it may be interesting to **compare the proportion of women in decision-making positions in markets with different degrees of competition**. This comparison should be made at a European or international level, so as to have enough data. To perform this analysis the key issues would be to decide what should be considered as decision-making positions and to decide how to assess the level of competition in different markets. As in the previous proposal, to assess which markets would be less competitive, we could focus on those markets in which there are more competition authority decisions, industries that show wider profit margins or higher barriers to entry.

If the results of the analysis show that the number of women in decision-making positions is actually lower in those markets in which the competition authorities detect more infringements and impose more fines, it would show that the presence of women is conducive to an increase in the awareness of the competition culture and less frequent anticompetitive behaviour. Therefore, competition authorities might focus part of their advocacy work towards increasing the awareness of the need to promote women to decision-making positions.

# What is a “level-playing field” for women-owned SMEs to compete?

Proposal by Maribel Daño-Luna and Rose Ann Camille Caliso

## Background, Rationale, and Objectives

By many measures, the Philippines enjoys a certain level of gender parity. In the 2020 [Global Gender Report](#) of the World Economic Forum (WEF) ranked the Philippines 14<sup>th</sup> in terms of economic participation and opportunity dimension. The Philippines' relatively high ranking on gender parity provides a bright outlook on women's economic empowerment. However, when it comes to scaling-up, women-owned enterprises tend to lag behind. In the [Global Entrepreneurship Monitoring \(GEM\)](#) reports for 2015/2016, while there are more women entrepreneurs who tend to engage in early-stage entrepreneurial activity, they were less likely to have established businesses compared with their male counterparts. However, while GEM has gender reporting, targeted policymaking is hampered by lack of accurate national-level data on women entrepreneurs. For instance, the Annual Survey on Philippine Business and Industry do not have gender disaggregation. [OECD \(2017\)](#) estimates that self-employed men are 2.24 times more likely to be employers than self-employed women. However, using Labor Force Survey data self-employment does not accurately capture women entrepreneurs which in turn affects targeted implementation (Pike, 2020). This makes it difficult to design inclusive policies for women enterprises to compete.

For a firm to be able to compete, it must first meet basic eligibility criteria or initial conditions, just like in any competition. International Trade Centre since 2015 reports in its flagship document SME Competitiveness Outlook in different countries. It utilizes a framework for SME competitiveness with 3 pillars on capacity to change, connect, and compete in different levels of the environment: internal firm capacity, national environment, and immediate business environment. This framework was modified in a Philippine study on drivers to SME competitiveness ([Daño-Luna, Canare, & Francsico, 2018](#)) where the modified pillars were analyzed at various levels, namely, at the level of the entrepreneur, environment, and internal firm capacity. In this way, the entrepreneur is treated as a separate individual from the firm entity thereby separating the objectives of the two: that is profit maximisation versus entrepreneurial / growth orientation ([OECD, 2018](#)). However, it would be difficult for a firm to compete if they are burdened in terms of basic access to resources and opportunities such as access to finance, innovation, exporting, expansion, access to markets, and access to networks. The Philippine SME study in 2018 reveals that access to these factors as well as tight competition are significant barriers for SME competitiveness.

While the barriers experienced by men and women-owned SMEs are not different, the reasons behind vary significantly. Unique reasons for women-owned SMEs ([Daño-Luna & Caliso, 2019](#)) pointing to these factors are associated with risk-taking and growth intention of women entrepreneurs.

To create effective policies promoting a level playing field for WSMEs to compete, it is crucial to address the reasons hindering gender inclusive competition. As such, there is a need to close the gender gap between men and women-owned SMEs competitiveness. While doing so, firms with market power should be prevented from harming firms by raising prices, reducing supply, or degrading the quality of product ([Abrenica & Bernabe, 2017](#)). Gender inclusive competition policy means not just more women competing versus men but at the same time proactively addressing reasons behind why men and women cannot compete in the first place.

Are the reasons that hinder women to compete different from men? Are these addressed by the policy environment? What are these reasons and how to close the gender gap, if there exists such? In other words, what is the minimum cost to close such a gender competition gap and consequently create a gender inclusive competition?

Using the poverty gap index as an analogy to model this problem, we look at the what the minimum cost is to eliminate gender competition gap and consequently create a gender inclusive competition. In the equation below,  $Z$  is the poverty line and  $Y_i$  is the income of  $i$ th poorest person while  $N$  is the population. It captures the average income shortfall in the population as a fraction of the poverty line. Once these shortfalls have been filled, then the poor in the population are now (weakly) above the poverty line. Using this model as gender inclusive competition index,  $Z$  refers to the minimum access to resources and opportunities needed for a firm to compete and  $Y_i$  is the current access of a “disadvantaged” firm while  $N$  is the number of firms competing in a given country or locale. The minimum cost to eliminate the gender gap in competition is represented by  $\theta$  as shown below.

$$\frac{1}{N} \sum \frac{(Z - Y_i)}{Z} \leq \theta$$

Against this backdrop, this paper aims to do the following:

1. Define a “level-playing field” where women and men are able to compete, that is, what is the minimum access to resources and opportunities needed for firms to inclusively compete
2. Analyse existing policies whether it addresses reasons behind some firms not meeting the minimum access to resources to be able to compete
3. Proposed a framework on how to address the reasons why firms lag behind in accessing resources needed for them to compete

### **Methodology**

To achieve the objectives, a survey and focus group discussion (FGD) will be conducted. The survey can be a part of a larger survey while the FGD questions can inform the development of a framework on a gender inclusive competition policy. As a starting point, themes from the [ITC’s SME Competitiveness pillar on capacity to compete](#) will be integrated in the survey questions and analysis. These are quantity and cost requirements, time requirements, certification and standards, and competitors. While ITC’s SME Competitiveness Survey data analysis captures how a firm is able to compete by

accessing resources and having the competencies to manage those resources, probing deeper on the reasons behind why women-owned firms lag behind in competitiveness is a key step in creating gender inclusive competition policy. Moreover, the framework to be developed will be aligned with the [OECD Competition Assessment Toolkit](#).

## PROPOSED RESEARCH:

# GENDER AND AGENCY PROFICIENCY: THE IMPORTANCE OF DIVERSITY

## I. BACKGROUND

Gender inequality is a major issue in the debate around public policies in different areas (e.g., education, labour). The promotion of gender equality constitutes a key challenge in our era, since we cannot discuss development in the absence of gender equality. The relevance of this topic has encouraged many studies in different fields. Competition policy has also played a role in this discussion given its direct link. Indeed, “consumer welfare is clearly not maximised in a market that is unfair or subject to inequality”(Long, 2019).

From a global perspective, there are various studies that have examined the role of competition law in the battle for gender equity. Most of them, like the OECD paper on Gender and Competition (Pike and Santacreu-Vasut, 2018) or the article “Gender inequality, market distortion and consumer welfare: A call to action for competition authorities”(Long, 2019), are focused on the role that competition needs to perform in order to remove the gap existing in different markets. For example, Pike and Santacreu-Vasut suggest prioritizing markets that are vital for women (e.g. childcare, finance) to contribute to the fight against gender inequality (Pike and Santacreu-Vasut, 2018).

However, none of these studies examine how a gender-based institutional design can influence the performance of competition authorities. Such studies have been conducted in other sectors. Indeed, there are studies that analyse the contribution of women in companies’ performance. Some of them have even shown that women in innovative companies tend to perform better in management roles than their male counterparts(Quiroz-Rojas and Teruel, 2020). Likewise, others have shown that there is a positive contribution of woman on labour productivity (Gallego and Gutierrez, 2018).

As a non-governmental organization focused in competition and regulation, we firmly believe it is necessary to carry out a study with this focus, since gender equity within our competition authorities is consistent with the contribution that competition law itself can make in matters of gender inequality.

## II. HYPOTHESIS TO BE TESTED

In the proposed research, to reaffirm that institutional design of competition agencies should be conducted through the lens of gender equity we will test whether diversity in competition agencies affects the outcome and performance of different agencies.

Our first hypothesis is that diversity and gender equality have a positive impact in competition agencies outcome and performance; the second one is that the presence of women is a key determinant of the outcomes and performance of the agencies studied.

## III. COMPETITION AGENCIES INVOLVED IN THE STUDY

For the purposes of this study, we have the support and participation of various competition authorities, including Uruguay, Spain (CNMC), Luxemburg and Chile (“Participating Agencies”). To implement the study each authority will define a technical counterparty to analyse and define the most relevant indicators considering the different organizational structural. The objective is extending this study in more agency around the world.

#### **IV. METHODOLOGY**

This study will be based on empirical evidence. Indeed, to test our hypotheses, we will use as a modelling framework the background information provided by each Participating Agency in cases brought before the courts in the last 10 years. In particular, the Participating Agencies will be asked to provide the following information (i) disaggregated information about their staff; (ii) information from the various activities conducted by the Participating Agency in relation to the cases that are litigated in the courts during the period defined for this study; and (iii) information about those cases.

A second resource to be used are surveys among the counterpart professionals of the Participating Agencies during the selected period to obtain their perception of the effects of gender equality on the outcome and performance of the Participating Agencies, as well as the effects of the presence or absence of female professionals on these teams on the outcome and performance of those agencies.

#### **V. RESEARCH TEAM**

In the research will participate the following academics that belong to Red Pro Competencia:

Vanessa Facuse, lawyer partner in Bofill Escobar Silva Abogados since year 2017 as associate, with expertise in antitrust, administrative litigation and regulated markets. Between the years 2013 and 2016 was Chief of the Division of Litigation of the National Economic Prosecutor and formerly as Sub-Chief of Litigation in the same institution (2010-2013). She also served as Coordinator of Regulated Markets of the National Economic Prosecutor (2009-2013).

Ana María Montoya, economist Phd in Economics in Universidad de Barcelona, Master in Industrial Economy Universidad Carlos III, Master in Public Policy, Regulation and Impact Assessment in Universidad de Chile academic researcher and academic in Universidad de Chile and Universidad Adolfo Ibáñez (Chile). Partner and economic consultant in Butelmann Consultores . Between the years 2012 and 2015 was Chief Economist of the Antitrust Unit of the National Economic Prosecutor and formerly economic advisor of Judges in Antitrust Tribunal (2009-2010).

Catalina Medel, lawyer, MSc Regulation, PhD candidate in Law, academic in Universidad de Chile and Universidad Adolfo Ibáñez (Chile).

Valentina Novoa, lawyer, research assistant in competition issues.



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## OECD Project “Gender inclusive competition policy” Proposal from CADE – Brazil

Several researches, published each year, present results that evidence an incongruous reality: inequality between men and women at all aspects.

In relation to men, women hold less formal employment positions and strategic positions, and have shorter average study time. Besides, women experience sexual and psychological harassment within corporations. These are some of the many examples that we could cite, which are demonstrated by statistics exhaustively. We have come to a time that, more than indicating, we need to work proactively to speed up the inclusion process through affirmative actions for gender equality.

In the international scenario, the Organisation for Economic Co-operation and Development (OECD) is a prominent forum for the elaboration and development of public policies by fostering cooperation between members and partner countries, and by encouraging the exchange of experience and the search for efficient solutions for common issues. In addition, the organisation has international power and credibility. Consequently, it has great power of influence for changes in countries seeking better public policies and better alignment with the best international practices.

The peer review is a method commonly used by OECD, in its different committees. The Brazilian antitrust authority has already submitted itself to three peer reviews within the competition law and policy; and the last peer review, underwent in 2018, enabled Brazil to enter as an associate member to the Competition Committee of OECD.

The first stage of said peer review concerned a questionnaire raising several questions on the legislation and functioning of the Brazilian Competition Defense System, among which we highlight the statistics of CADE’s performance and organisational structure. The questionnaire collected data on the allocation of staff by sectors, but no aspect related to gender equality was questioned. Thus, considering the operation scope of OECD and the importance of gender equality for the development, we suggest a study aimed at:

- (i) Improving the peer review process of OECD, in a way that questions related to gender equality are included on the assessment questionnaire; and
- (ii) Making recommendations for inclusive gender policies at the multilateral level.

We understand that an OECD view of this issue in its peer review process would result in new recommendations, in case distortions are detected, based on parameters to be established. These recommendations can also be addressed to member countries that possibly may not have adequate inclusive gender policies.

As we know, the bodies that receive OECD recommendations invariably adopt them. Thus, promoting gender equality within antitrust agencies can be achieved by OECD’s recommendations and monitoring, being a first step towards competition policies focused on gender equality to be effectively developed, with impact on society.

The adoption of parameters by OECD in its peer review process, focusing on gender equality, is an aspect that must be taken into account in order to envision, even in the long term, effective changes in the world that actually offer inclusive public policies. The OECD’s driving force for major global change is unquestionable. The organisation is able to develop an understanding of

how, in practice, antitrust authorities can make operational, analytical or political changes to enable women to develop their full potential and have access to opportunities in the same way as men.

Subsequently, the initiative may be disseminated with the other committees of OECD, as part of a global strategy for inclusive gender policies.



## **Name of Proposed Study: Language, Gender Norms and the “Pink Tax”: Understanding the source of gendered consumer behaviour**

**FCCC**

### **DETAILS OF PROPOSAL:**

While gender discrimination may often take an overt form, the importance of less easily observable subtle or even unconscious biases in the decision-making of economic actors is increasingly being recognised. One striking example of the subtlety and pervasiveness of gender inequality was highlighted by a recent working paper by Pamela Jakiela and Owen Ozier for the World Bank, which shows a relationship between the use of gendered language and a range of indicators of gender inequality. For example, Jakiela and Ozier (2018) show that labour force participation is more unequal in countries which use languages featuring grammatical gender, and that a similar effect is found when comparing labour force participation and educational attainment in communities speaking different languages within countries. The authors note the consistency of this finding with similar findings in other disciplines such as psychology, linguistics and anthropology, which highlight the subtle and subconscious ways in which language frames and influences patterns of thought.

We propose that this language effect may, therefore, be a useful instrument for evaluating for the underlying and unobservable cultural underpinnings of gender inequality. The effects of this underlying cultural framework may be significant, and is not directly observable through the examination of legal frameworks affecting gender inequality or the observation of gender inequality in outcomes.

We propose to exploit the relationship between gender inequality and language to further examine the effects on price-setting behaviour, labour market and business ownership decisions of gender norms. Our proposed research has numerous possible applications in examining the interaction between social norms, markets and consumer welfare.

One common phenomenon in a range of markets is the “pink tax” effect, which sees women charged higher prices than are charged for those same products when they are marketed to men. This often takes the form of marketing products which are substantively identical in, for example, a pink “for women” and a blue “for men” version, often with higher prices being charged for the female version. This mark-up can be substantial – between 4 and 13% according to New York City Department of Consumer Affairs study (DCA, 2015) – and the ability for firms to price discriminate in this way is often taken as evidence that markets are imperfectly competitive, because more competitive markets would have competed the price differential away.

Our proposed research project aims to establish whether the magnitude of this “pink tax” can be partially explained by these cultural differences between and within countries, for which the existence of grammatical gender will be used as an instrument. We consider that this could be studied by selecting a range of products for which “pink tax”- style price discrimination has been found in the past, and studying the variation in the size of this effect according to the

grammatical structure of local languages. This could be implemented by constructing a list of products for which pink tax effects have commonly been found in the past, and using the prices of these products across countries to construct an index of the average mark-up imposed on these products relative to their male-oriented or gender-neutral equivalents. This could then be analysed with an instrumental variable regression, using grammatical gender as the instrument, with a range of appropriate controls. It would also be possible to use a disaggregated version of the index to study sectors individually.

This will contribute to our understanding of the market dynamics which lead to “pink tax”-style effects. Akerlof and Kranton (2000) suggest that “pink tax” outcomes are possible because individuals choose products depending on their self-perceived gender identity and that switching to a cheaper product which does not align with their identity imposes psychological costs which deter switching. It is likely, therefore, that the magnitude of these psychological costs will be higher in societies with stricter gender norms, and that this will increase the extent to which sellers will be able to profitably raise the price of women’s goods without fear of consumers switching away to cheaper men’s products or ungendered products. A positive relationship between the use of linguistic grammar and the relative size of the pink tax would provide supporting evidence for the Akerlof and Kranton hypothesis that the pink tax is supported by the psychological costs of deviating from the expected consumer choices of your gender. The absence of a relationship would call into question the Akerlof and Kranton explanation for pink tax effects.

This is potentially important for practitioners of competition policy, because it will further our understanding of the market and consumer dynamics underlying pink taxes. This in turn has implications for the interpretation we can place on pink tax effects: for example, if gendered languages and gender-inequality indices have no relationship to the size of pink taxes, it suggests that firms may not be exploiting the unwillingness of consumers to buy the “wrong” gender of product – instead, the pink tax may exploit consumers’ erroneous belief that the products differ in some material way. It is possible, for example, that the pink tax reflects an attempt by vendors to signal to consumers that the good differs qualitatively from cheaper products. The combination of consumer beliefs about quality differentials between “men’s” and “women’s” products and price signalling to uphold this belief could sustain a pink tax even when competitive pressures are strong, and this explanation is likely to depend on consumers’ beliefs about the specific products rather than gendered price discrimination *per se*. As such, our proposed study will help to ascertain the extent to which the existence of pink tax effects can be interpreted as evidence of imperfect competition. Moreover, if the study indicates that grammatical gender has a significant effect on the magnitude of pink taxes, it will provide evidence in favour of taking more seriously the segregation of consumer markets by gender in merger assessments and market studies.

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## **Name of Proposed Study: Taboos, Gender Norms and Consumer Prices: Examining the existence of a price premium for products relating to gendered social taboos**

**FCCC**

### **DETAILS OF PROPOSAL:**

When considering the intensity of competition in a given market, it is common to focus on aspects of market structure which are, in principle, relatively easily observable. Merger assessments, for example, will commonly begin with a description of the various players in the market, the market shares of these players, the nature of price-setting and advertising behaviour in that market, and so on. However, the relationship between market structure and market outcomes is mediated by information flows between sellers and buyers, and between one consumer and another. In many markets, the two main categories of information flows will be advertising and word-of-mouth, and these flows are likely to be affected by prevailing gender norms within the society. This study aims to examine further the relationship between these information flows and market outcomes when the existence of gendered taboos serves to limit these information flows for female consumers.

It is common for societies to develop “taboos”, which govern the behaviour and utterances of members of those societies, commonly in such a way as to prohibit or strongly discourage the taboo behaviour. When a topic is subject to a taboo, it is commonly the case that both the topic itself and discussions of the topic become stigmatised, and it is for this reason that discussions of taboo subjects are often referred to as “breaking the taboo” (for example: Askew, 2007; Bowers and Moran, 2002) . Given that the fact of a topic being subject to a taboo limits the ability of members of that society to discuss the taboo topic, it is likely that this limits information flows regarding products relating to the taboo.

Of these common taboos, there is a substantial subset which concern matters of sex and gender. For example, there are common taboos surrounding menstrual hygiene (Sommer and Sahin, 2013), sanitation (Black and Fawcett, 2008), and women’s sexuality (Traumer, Jacobsen and Laursen, 2018). While the strength of these taboos may vary considerably from country to country, there is nonetheless a common taboo status which these topics share across many countries.

Given the impact of word of mouth information flows noted above, and the increased likelihood that sellers will be unable to market their products openly, we consider that the existence of a taboo is likely to constrain information flows to consumers regarding products related to taboo subjects, and that this is likely to have an impact, in turn, on the quality and price of the product.

The study will focus on establishing whether the strength of these gender-based taboos has a material impact on the prices and quality of products which relate to these taboos. It is possible that the existence of a gendered taboo will worsen the price and quality of goods relating to the taboo, because it limits the possibilities consumers have to establish whether goods represent value for money and whether there are more desirable alternatives available elsewhere. We

consider, moreover, the possibility that vendors of products relating to taboo subjects may be able to charge a “taboo premium” on their products because consumers may be unwilling to shop around and because consumers may prioritise their ability to purchase the product secretly over the price and quality of the product itself.

We propose to measure this by constructing a list of common gendered taboos and, from this list, an inventory of products which are connected to the taboos in question. We then propose to construct an index of the strength of these gendered taboos by country. A number of methods may be considered for constructing this index: one option would be to establish which of the listed common gendered taboos are commonly discussed in the media of the country in question by measuring the relative usage frequency of related word in national newspapers; a second option would be to use survey data similar to the Attitudes, Practices and Social Norms survey carried out in Nigeria (Denny and Nwankwo, 2015). Each of these methodologies has its advantages over the other: in particular, the word- counting methodology has the advantage of being comparatively easy to implement, while the survey method is likely to capture the essence of gendered taboos more effectively. We consider that the survey method should be preferred, subject to the resource constraints to which the study is subject.

It would then be possible to perform a cross-country comparison to establish whether either gender inequality measurements or our index of gendered taboos affects the price of taboo-related products once other variables such the cost of living, GDP per capita, and levels of education have been accounted for. For robustness, this could be carried out using a range of the possible indices of gendered taboos listed above.

A positive relationship between the gender-taboo index and the price of the products could indicate that the existence of gendered taboos reduces the extent to which competitive pressures are able to reduce prices and protect consumer welfare. Otherwise, it may be likely that information relevant to consumers concerning price and quality is still being effectively disseminated, even in the presence of taboos which restrict consumers ability to discuss the products in question openly.

There are a number of practical considerations for competition authorities which could arise from such a study. For example, we may need to be more sceptical of the effectiveness of competition in markets relating to taboo products, which may have significant implications for merger assessments and competition authorities’ advocacy work. It may, for example, be necessary to take the existence of gendered taboos into account when establishing the intensity of competition which is likely to exist in the aftermath of a merger between firms in a market dealing with goods or services relating to the taboo.

Similarly, competition may carry an additional benefit for consumers in societies with strong gendered taboos if competition between providers help to undermine the anti-competitive elements of the taboo, even if the taboo itself remains in place. For example, in a competitive market firms may pursue an advertising strategy which successfully conveys details about the price and quality of the products in question without breaching the taboo. Such a finding could recommend that competition authorities especially focus their advocacy efforts on markets relating to taboo subjects. This is a plausible application of our consumer advocacy roles: given the nature of the markets in question, it is unlikely that effective advocacy will come from elsewhere.

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## **Name of Proposed Study: Culture, Gender Norms and Barriers to Women's Business Ownership**

**FCCC**

### **DETAILS OF PROPOSAL:**

While gender disparities in business and consumer life have been of interest to economists and competition authorities for many years, and this interest has often focussed on the material and legal barriers facing women, in recent years there has increasingly been an acceptance that many of the factors adversely affecting women are subtle and extremely difficult to observe. There, has, for example, been an increasing interest in the role of unconscious bias in hiring decisions (Rhode, 2017; Williamson and Foley, 2018; Madsen and Andrade, 2018), and the role of "stereotype threat" in women's performance in education and other spheres (Stoet and Geary, 2012; Schmader, 2001; McGlone, Aronson and Kobrynowicz, 2006). Given that some research, for example Bhawe and Gupta (2007), shows that the effects of stereotype threat can be seen in business decisions, these subtle biases are clearly relevant to the business of competition economics.

There have been a number of innovative recent papers exploring possible avenues for examining the effects of these pernicious biases more closely. For example, Pamela Jakiela and Owen Ozier (2018) have shown a relationship between labour force participation and educational attainment and the presence of grammatical genders in the languages of countries and communities. The authors speculate that this may arise from the effects of language in changing the way that the language-user's thoughts are framed, and note that this broadly lines up with the findings of studies in other disciplines like linguistics and anthropology.

We propose to exploit this relationship between gender inequality and language to further examine the effects on business ownership decisions of gender norms. Women's entry into markets as business owners is influenced by social, cultural and legal factors (Pike and Santacreu-Vasut, 2018). Typically, legal factors are easier to measure than social and cultural factors, as these restrictions are more observable. Legal restrictions may, for example, take the form of explicit prohibitions on women's participation in certain markets (Pike and Santacreu-Vasut, 2018), operate businesses which bring them into contact with men, or restrictions on their ability to access some services which are essential for the operation of a business – such as a restriction on women's access to the legal system or requirements for women to be represented in court by a spouse or male relative (United Nations, 2009). Cultural factors are, however, considerably more difficult to quantify. It has, therefore, been difficult for studies in the past to distinguish between the effects of legal restraints on women's ability to compete as business owners and cultural factors which reduce women's entry into markets.

Our proposed research project aims to examine whether variation in rates of female business ownership between and within countries can be partially explained by cultural norms surrounding gender, for which we intend to use grammatical gender as an instrument. This study proposes to perform a cross-country comparison of the rates of business ownership, including controls for common legal restrictions on women's business ownership. Controls for other common restraints on women's access to business ownership may also be included – for

example, by inclusion of data on gender and financial inclusion from the World Bank's Findex dataset. This would be carried out with instrumental variable regression analysis using grammatical gender as an instrument.

The purpose of this research would be to further our understanding of the reasons for differing rates of business ownership among women and the nature of any gender-specific barriers to entry facing women in setting up businesses. By using the linguistic phenomenon identified by Jakiela and Ozier as an instrumental variable for the effects of underlying cultural norms, we aim to isolate the independent effects of other factors (such as access to finance or similar constraints) on rates of business ownership among women.

This study aims to add to the body of knowledge surrounding women's participation in markets as business owners, and to help competition agencies to identify the nature of possible barriers to entry affecting women. This paper aims to contribute to the debate around the relative significance of various kinds of entry barriers facing women when deciding whether to enter markets as business owners.

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## **Name of Proposed Study: Gender Norms, Informal Finance and Business Failure in Developing Countries**

**FCCC**

### **DETAILS OF PROPOSAL:**

In many developing countries, entrepreneurs setting up new businesses often face restricted access to individual financing or social norms which stigmatise individuals breaking away from their original community or family units. As a result, many are more likely to make use of funding from their village, community or family unit to finance the formation of a new business than is the case in the developed world. This is reflected in the greater relative importance of informal financial sectors in developing countries (Thomas, 1992). This funding may often come with “strings attached” as the village, community or family unit expects to retain some level of control over the business after having dispensed the funds with which it was established. Similarly, the individual in question may have to have been selected from a range of members of the village, community or family unit, while other members contribute in some other way to the upkeep of the unit. This, naturally, raises some competition concerns if businesses which are notionally competitors share a common family- or community-unit which retains significant control over the day- to-day operations of the businesses in question.

In many societies, women face various forms of discrimination in the economic sphere, for example: women have been found to experience more difficulty gaining access to loans (Fay and Williams, 1993); women are offered worse initial prices when purchasing cars (Siegelman and Ayres, 1995); and women sometimes face sex discrimination in hiring decisions (Glick, Zion and Nelson, 1988). In addition to this discrimination, in many societies women face more restrictive expectations on their social roles, which often does not include a role as a major earner for the family, community or village unit (ODI, 2015). As such, it is likely that the presence of strongly gendered norms around the social role of women – for example, norms which see women primarily as mothers and domestic workers – will reduce the extent to which female business owners genuinely possesses full control over the businesses operations by increasing the extent of intervention by other community members in the operations of the business. There are a number of possible transmission mechanisms by which these norms could translate into more limited opportunities for women to genuinely control their businesses. For example, women may face worse outside options if they find that the family- or community unit’s support is withdrawn, or may face more significant social stigma for deviating from the expectations of the family- community-unit.

As such, it is possible that the relationship between gender and the independence of business operators from their families is such that increasingly strong gender norms or severe gender inequality at the level of the society will be associated with a reduced rate of business failure, as businesses with less operational independence are insulated from shocks by the fact of their not really being the independent businesses they notionally are. This paper aims to establish whether the existence of strong gender norms exaggerates the extent to which businesses which share a common family- or community-root really operate using a shared common pool of resources rather than as genuinely separate businesses, thereby increasing the observed resilience of the notionally separate business entities to short-term shocks and reducing the rate of business failure.

We propose that the strength of gendered social norms can be modelled using the UN Human Development Report's Gender Social Norm Index 2020. This data on the strength of gendered social norms will be used in conjunction with cross-country data on the rate of business failure among small-, medium- and micro-enterprises to assess the effects of the gendered social norms on the dynamics of competition in the markets in which these businesses operate.

This paper proposes to investigate two relationships: firstly, whether the extent to which businesses are financed by family- or community networks decreases the rate of rate of business failure; and secondly, whether the effect of this family- or community-financing is exacerbated by the presence of strong gendered social norms. The extent of family-financing relative to the formal financial sector may be measured using the World Bank's Findex Dataset, which asks respondents about borrowing from family members. It would then be possible to perform a cross-country comparison to establish whether either gender inequality or the strength of gendered social norms influence the relationship between the use of borrowing from family members as a substitute for formal financial institutions and the rate of business failure. This could be carried out by regression of the rate of business failure on the Gender Social Norm Index, an index which expresses the relative frequency of borrowing from family members as a substitute to borrowing from the financial sector, and an appropriate interaction term for these two variables.

There are potentially significant implications from this study for competition authorities. For example, the study may shed light on the extent to which businesses which are separate entities in terms of their official ownership, financing and management can be taken to exert competitive constraints on one another when the owners or managers of these firms share a family- or community-unit in societies with strongly gendered social norms. This is potentially important for competition agencies in developing economies with strongly gendered social norms. Given the prevalence in many such societies of family- and community-financing, it is important for the assessment of the strength of competitive constraints when several of the competitors are owned by members of the same community.

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## OECD GENDER AND COMPETITION POLICY

### Have financial regulators ever thought about their impact in women economic dependency?

Jessica Medina García,  
Ecuador

In Ecuador we have a highly regulated financial market. Interest rates are regulated due to a high degree of concentration in this market, where operators can act coordinately and increase interest rates. In Ecuador financial markets are as in any other country, regulated by a specific and specialized administrative authority. They have no connection or relation with the competition authority, and they do not act coordinately in the design of financial regulation.

Markets are not driven by innovation and have largely been concentrated without any new competitors entering the market. In light of the digital era, they haven't for example, implemented contactless payments and so on. Now that we are seeing an increase in E-commerce, digital payments become immensely necessary and I would like to explore the idea that regulation has not effectively tackled market failures and it still continue to have a responsive attitude instead of making positive changes or creating economic incentives for competitors to innovate.

In Ecuador we have a high rate of informal economy and we know that this has an impact in unpaid work for women. We know that if they could have access to financial markets, they might be able to access the formal markets and have better work conditions than they currently have.

In fact, regulation has allowed the appearance of a new market where cloths stores and white goods stores can directly finance the purchases of their clients with truly high interest rates. If women do not have a job and do not hold a credit card, they will pay higher rates of interest in their consumption, leading them to a deeper economic dependency.

In this regard, I am very concerned that the exclusion of women from the financial markets will be deeper in the digital era, if we do not include a gender lesson in their regulation and I would like to explore how cooperation between these two institutions can help to design better financial regulation to drive innovation and leveling the playing field for women.

## Policies aiming to increase financial inclusion: the role of competition when the market discriminates women

Is more competition always preferable?

By Andrea Von Chrismar Medina, Alejandra Vallejos Morales,  
Paula Hollstein Barría, Maikol Cerda Zavalla

### BACKGROUND INFORMATION/INTRODUCTION

In October 2005, the Chilean public-owned bank, *BancoEstado*, announced the launch of the *RUT*<sup>1</sup> account, an innovative financial product in those days. A RUT account works similarly to a checking account: it is mainly used as a non-cash payment method and allows cardholders to withdraw money from any ATM.<sup>2</sup> The product was initially offered to every Chilean, whether living in Chile or not and to foreign residents.

The goal of the policy implementation of the RUT account was to increase the relatively low level of financial inclusion observed in the Chilean territory. BancoEstado aimed to incorporate middle- and low-income households, targeting both rural and isolated geographic areas, and women who had been out of the labour market for an extended period. To achieve this goal, BancoEstado allowed clients to open a RUT account without showing a minimum income level nor accrediting any other credit background or external support.

This policy has been recognized as a pivotal tool for enhancing financial inclusion in Chile. After ten years since its implementation, over 10 million RUT accounts have been opened (representing more than 50% of the Chilean population). Also, besides giving broader access to a wide range of previously uncovered households, the RUT account allowed micro and small businesses (SMEs) to incorporate financial services as a payment method. Currently, more than 10% of RUT account holders were or have become small entrepreneurs. As the 2018 BancoEstado annual report mentions, SMEs could expand their businesses and improve their payments to workers and suppliers using their RUT accounts.

Following the successful implementation of this innovative financial product, private banks implemented similar policies. Even though some private banks have attracted new consumers (some report a growth of 850% in ten years), BancoEstado remains the leading provider of this financial product keeping 60% of the market share over the last couple of years.<sup>3</sup> Nevertheless, even though this social policy seems to have achieved its goal, and the competitors have reacted competitively, the Chilean financial market still discriminates against women. Despite the historical data showing that women's savings are higher and safer, men still have easier access to loans and hold higher relative participation in checking accounts (58,8% versus 41,2%). In the same line, studies indicate that, while the numbers of debtors are gender-balanced, women's access to credit is still 40% less than the amount granted to male debtors.<sup>4</sup>

### THEORETICAL UNDERPINNINGS

Financial markets are characterized by the presence of relevant market frictions that together impede their normal competitive performance. Asymmetries of information, switching costs, network effects, and past purchases behaviour affect the current equilibrium. When these conditions are present, direct regulations and the implementation of *socially optimizing* policies are needed regardless of the competition level that exists in the market. Nevertheless, we believe that the final impact of a policy (*i.e.*, how efficient it will be in the long term) that is aimed at incorporating poor and nonprofessional women into the banking market, will be impacted on by the existing competition among private banks. Specifically, we expect that given the

relevance of a “good” rated historical financial background, the existence of network effects, and cross-saving costs when a customer purchases different financial products from the same bank, a higher competition level would diffuse the pro- inclusive women policy among the whole population in the short term.

## MAIN QUESTION AND RESEARCH HYPOTHESIS

We hypothesize that the RUT account initiative increased households’ and SMEs’ financial inclusion not only due to the access to the debit card directly associated to the bank account, but also through complimentary access to more sophisticated financial products like savings/checking accounts, and mortgage and consumption loans. We postulate that both low-income households -especially those where a woman was in charge and located in remote areas-, and women out of the labour market for a long time, were the segments of the population which were most positively impacted on by the implementation of this social policy.

Our main hypothesis to test is the following: higher competition in unfair functional markets will allow a more efficient implementation of a social policy that aims to improve the access and coverage of less represented groups, especially women.

## METHODOLOGY

We propose to develop a time series analysis to quantify, first, the short-term impact of the RUT account program on financial inclusion in a disaggregated fashion (by gender, geographic area, and social-economic indicators). Second, we would like to quantify the impact that this standard and zero-risk financial product has had in terms of *opening doors* to other, more sophisticated financial services. The focus of this second analysis will be on women who have not previously had access to any banking product. We define this second effect as a *long-term impact* since it will allow well-rated beneficiaries to build a solid financial background that they can exploit in the future according to their life-long investments and consumption decisions.

To achieve these goals, we will exploit available public historical information regarding the number of financial products that private banks and BancoEstado have offered over the last ten years. We would also like to access to datasets containing information related to BancoEstado cardholders to perform a more in-depth microanalysis.

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<sup>1</sup> Identification number used by persons who reside in Chile similar to DNI used in other countries.

<sup>2</sup> In other words, a RUT account allows the cardholder to receive income (such as wages, pensions, allowances, payment of services, scholarships) and to make payments (service accounts, taxes, purchases with debit cards, bank deposits, and make withdrawals)

<sup>3</sup> In 2017 (Case Number C323-2017), BICE Bank issued a claim at the Chilean Competition Court requesting the Court to declare that BancoEstado was abusing its dominant position through (i) the leverage of the RUT Account by way of bundling of this and electronic fund transfers; (ii) the collection of excessive prices; and (iii) discriminatory prices. The same accusation was alleged by other Banks in the plaza who participated as third collaborators. On the 21<sup>st</sup> of August 2020, the Chilean Competition Court rejected the claim. The case is pending at the Supreme Court. Page 71 of the Sentence 174/2020 Available at <https://consultas.tdrc.cl/download/173611?inlineifpossible=true>

<sup>4</sup> Gender in the Financial System, November 2019. Financial Market Commission. Available at [https://www.cmfchile.cl/portal/estadisticas/606/articles-27808\\_recurso\\_1.pdf](https://www.cmfchile.cl/portal/estadisticas/606/articles-27808_recurso_1.pdf)

## RESEARCH RELEVANCE

A recent study<sup>5</sup> showed that RUT account holders on average additionally consume 2,6 financial products. Other studies and BancoEstado annual reports have also documented the positive impact of the RUT account initiative resulting in higher financial inclusion national-wide. However, to the best of our knowledge, there is no single study analyzing the social impact of this policy disaggregating the data into different socio-economic levels and gender. Nevertheless, we agree with the Chilean Supervisory Regulatory Agency (SBIF) in that the positive impact of the RUT account implementation on other financial services can still be improved. According to a recent SBIF study, the current degree of financial inclusion in Chile is high (compared to other developing economies), taking into consideration that almost the whole adult population currently has access to at least one financial product. However, at the same time, only one third of adults have access to either savings accounts or mortgages.<sup>6</sup>

We believe that our proposal is relevant beyond the Chilean case since many banking markets in developing economies present similar structural frictions. We see financial inclusion as a key factor in promoting economic growth in the long term. Besides impacting on the way households consume and save, financial inclusion also increases consumption possibilities and generates, ultimately, higher welfare to low-income households. Women, many of whom have not had the possibility of enjoying the benefits that a fair and competitive financial market bring to society as a whole, could benefit. Lastly, we think that a rigorous analysis that includes both the competition and policy implementation spheres will allow us to understand the role that each part plays in the outcome. At the same time, the analysis would teach us how a welfare-enhancing policy can be implemented more efficiently (in the sense that every potential consumer, regardless of her or his previous social-economic status and gender, has the same probability of being affected).

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<sup>5</sup> Ibid. Page 72. Butelman Consultants Economic Report.

<sup>6</sup> Information available in Spanish at: [https://www.sbif.cl/sbifweb3/internet/archivos/publicacion\\_12462.pdf](https://www.sbif.cl/sbifweb3/internet/archivos/publicacion_12462.pdf) [accessed on 1st of October of 2020].



## GENDER INCLUSIVE COMPETITION POLICY – DEVELOPING THE EVIDENCE

Mexico

*Federal Telecommunications Institute (IFT)*

### DO COMPETITION AGENCIES HAVE ENOUGH ACCESS TO MARKET INFORMATION WITH A GENDER PERSPECTIVE?

Gender diversity entails a quantitative impact in the Gross Domestic Product (GDP) of a country, and a similar effect occurs in corporate performance. Several studies in the field have demonstrated that improving working conditions to foster gender equity brings benefits for society, governments and companies.

In the case of women in management, in Mexico, (Mckinsey & Company, 2018) evidence show that companies with great representation of women in decision making positions, have an added economic value, a profit margin and a return equity larger than companies with less female representation.

Additionally, Chris Pike (Pike, 2018) argues that male and female consumers experience different outcomes. Thereby, gender can influence market outcomes for consumers, and in the same way, influence transaction costs associated with participation in markets (Santacreu-Vasut & Pike, 2018). That is why competition policy plays a crucial role in gender equity, but in order to achieve that goal it is necessary to improve investigations procedures in order to obtain more information on the subject.

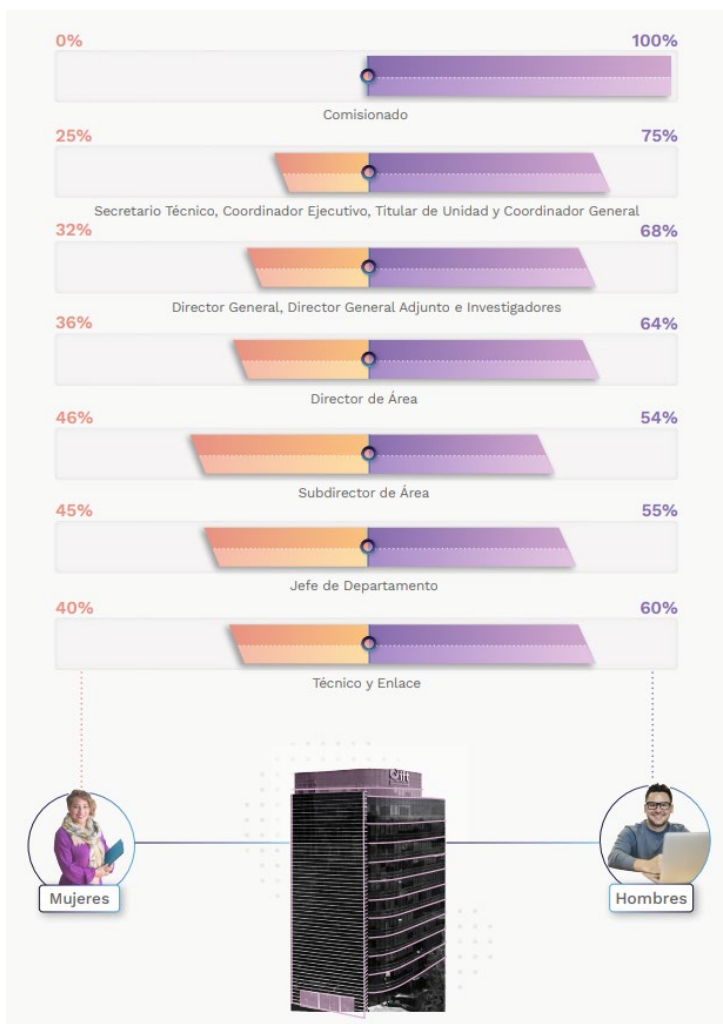
Nowadays, one of the main problems that competition agencies face in their investigation procedures are that **cases are not being treated by competition agencies with a gender perspective from the beginning**, regardless if they follow a complaint or if they are investigated *ex officio*, therefore they do not have enough data to evaluate market conditions, or identify discriminatory conducts with a gender lens.

As the OECD points out in its report on *Bridging the Digital Gender Divide*, action requires measurement; evidence-based policy making requires the systematic collection of data. In this vein, **competition agencies need to request information to companies with a gender perspective**, and in such a way that they will not only deliver the information of variables, such as sales, subscribers, subscriber penetration as a total, but subdivided by gender, so that the agency, for example, could calculate female market shares. Collecting this information may be useful to generate studies in which characteristics or patterns of behaviour can be identified.

Moreover, it is important to highlight, that if a competition agency starts requesting **databases with a gender perspective**, this could generate interest in the companies to begin identifying areas where there are gender gaps within their own structure, and even formulate strategies to reduce them, in order to improve their efficiency and the quality of their service or product.

**Women in the telecommunications and broadcasting (T&B) sectors in Mexico**

## The competition authority of the T&B sectors



Source: IFT

Women participate in the development of regulation and competition policy in the telecommunications and broadcasting sectors.

However, such participation is not yet equal according to the number of officials who work at IFT. This chart (last update: June 2020) shows the proportion of occupation of women (orange) and men (purple) by position band in the IFT:

- Commissioners
- Technical Secretary/Executive Coordinator/Heads of Unit/General Coordinators
- General Director, Assistant General Director and Researchers
- Area Directors
- Deputy Directors
- Chiefs of Departments
- Technicians, Liaisons/Analysts

At the end of the first half of 2020, 41% of IFT officials were women and 59% were men.

## Women's participation in the T&B sectors

Aware of the importance of both men and women getting involved and participating in the economic activities of our society, the IFT developed the *Calculator of probabilities of adoption of Information and Communication Technologies (ICT) and activities on the Internet*, in order to estimate the percentage of women that use T&B services, based on their sociodemographic characteristics, for instance, their use of a smartphone, consumption of paid audiovisual content, Internet consumption, use of social networks, use of internet banking, online sales, among others. This tool is available to the public at: <http://calculadoraprob.ift.org.mx/>

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## OECD CALL: GENDER INCLUSIVE COMPETITION POLICY

Dr Mary Catherine Lucey- Associate Professor UCD Sutherland School of Law

### PROPOSAL:

To create an online training module entitled “*Teaching competition agencies to dig deeper*”

This title is inspired by Manji’s insistence on the need to “to dig deeper and recognize that behind the judicial language of balance, fairness and efficiency, there are assumptions made about women’s role in the home and in the workplace and the propriety of their dealings in property.”<sup>1</sup>

#### Summary of module

The module examines techniques of feminist enquiry which revealed overlooked gender issues in (unlikely) legal fields such as IP law and International Law in order to teach competition agencies i) to question the assumed gender neutrality of their enforcement actions; ii) to consider whether enforcement actions may affect one gender differently to another and iii) explore the possibility of cementing or exacerbating socio-economic divisions. The module concludes by drawing attention to some opportunities to reduce gender injustice in line with the goal of bringing “an end to gender as a social category that operates to women’s disadvantage.”<sup>2</sup>

#### Proposed topics

##### 1. What is connoted by ‘gender’?

Scholarship related to gender is known as ‘feminist scholarship’.<sup>3</sup> It is most important to emphasize that, these days, the scope of ‘feminist scholarship’ is not confined to considering only women. Rather it is a “neutral term referring to a specialist field- the study of gender- not just the study of women but, of the *relation of women to men*, in which the role of men is at least as important as that of women.”<sup>4</sup> In the proposed module, gender is regarded as a category of social ordering which may be “deployed as an analytical tool to interrogate particular social relational configurations and their effects.”<sup>5</sup>

##### 2. Techniques for digging.

Examining *how* previously unsuspected gender dimensions in IP, land law and International Law were revealed is instructive. Three feminist techniques might help competition agencies to learn to think and probe their actions in a more gender aware fashion. These methods are i) to question and unmask the assumptions (or biases) which are embedded in apparently objective or neutral concepts; ii) to explore the possibility of gendered impact and iii) to question whether existing socio/economic disadvantage is perpetuated or even exacerbated.

###### i) *Assumptions*

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<sup>1</sup> Manji, A. “Land Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018) p.57.

<sup>2</sup> Auchmuty, R., “Using Feminist Judgments in the Property Law Classroom” (2012) 46 *The Law Teacher*, pp. 227,228).

<sup>3</sup> This is because, as Auchmuty points out, the gender bias of law was first revealed by feminists, Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018), p. xiv.

<sup>4</sup> Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018), p. xiv (emphasis added)

<sup>5</sup> Conaghan J., *Law and Gender* (Oxford University Press, 2013), pp. 23-4)

Feminist scholarship, according to Manji, has made a unique contribution to land law by revealing “the gender assumptions, working and outcomes of laws that are otherwise presented as neutral, universal and objective.”<sup>6</sup> The same scholar cautions that if we focus only on legal doctrine then we “risk missing what is really going on.”<sup>7</sup> Similarly, in the field of International law, Honkala argues that “[U]ncovering the silences within a discipline is a familiar feminist method that questions the objectivity of a discipline, as well as the ways in which law distinguishes certain issues as irrelevant, or of little significance.”<sup>8</sup>

### *ii) Gendered Impact*

Feminist scholars have not only critiqued the assumption that international norms directed at individuals are universally applicable and neutral but, additionally, have argued that International law principles affect men and women differently.<sup>9</sup> Feminist analysis of property law, has uncovered “the gendered impact of seemingly unrelated political and social shifts that have worked to restrict women’s financial independence, and, thus, their access to property rights.”<sup>10</sup> The possibility of gendered impact in relation to IP law has similarly been raised by Easton, for example, who argues that IP law’s formal neutrality masks the reality that it can affect men and women differently.<sup>11</sup>

### *iii) Adverse socio-economic effect*

The third technique of feminist enquiry looks for adverse socio/economic consequences. Easton argues that while IP laws may appear to be drafted written in a formally neutral way “their substantive application can exacerbate economic and societal divisions” and further maintains that “the wider framework surrounding the substantively neutral law has developed to exacerbate existing socio-economic divisions and to increase marginalization of certain groups.”<sup>12</sup> A similar argument has been made in relation to the adverse societal consequences for women in the context of International Law where traditional structures have been revealed to be gendered.<sup>13</sup>

## **3. Competition Law Enforcement through a gender lens**

This topic shines a light on bringing a gender lens to some activities of competition agencies. This proposal mentions only one example -the process of selecting enforcement projects. Other interesting examples (inspired by Pike and Santacruce Vasut) include the apparently neutral concept of market definition.

### *i) Project Selection*

Feminist scholarship is not confined to examining substantive norms but extends further to consider structures, method and processes. Prioritisation is, naturally, an important part of project selection as it suggests the criteria which are to be used to “assess the value” of proposed projects.”<sup>14</sup> Prioritisation by enforcement agencies usually intends to facilitate resources being directed towards “high-impact sectors or high-significance” projects and/or to assist the agency

<sup>6</sup> Manji, A. “Land Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018) p. 50.

<sup>7</sup> Manji, A. “Land Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018) p. 57.

<sup>8</sup> Honkala, N., “International Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018) p.88.

<sup>9</sup>Honkala, N., “International Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018).

<sup>10</sup> (Auchmuty 2012, p. 228).

<sup>11</sup> Easton, C., “Intellectual Property Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018).

<sup>12</sup> Easton, C., “Intellectual Property Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018) p 150

<sup>13</sup> Honkala, N., “International Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018), p. 94 and p 84.

<sup>14</sup> Kovacic, William E., “Deciding What to Do and How to Do It: Prioritization, Project Selection, and Competition Agency Effectiveness” (2018) 13 (1) *Comp Law Rev* p. 21.

brings its capabilities to bear most effectively on a “specific problem.”<sup>15</sup> These terms or criteria, at first glance, may appear to be neutral. However, applying a feminist lens leads to a less certain conclusion. Feminist analyses of international law norms “have sought to expose their structural biases and to question the value systems underlying the privileging and prioritising of certain issues over others.”<sup>16</sup>

Feminist analysis suggests that where agencies assume the gender neutrality of their project selection process, there is a risk of paying attention only to those markets which are, on an overall assessment, a “specific problem” or of “value”/“high impact”/ “high-significance”. The particular worry, from the feminist perspective, arises if assumptions of gender neutrality create an enforcement blind spot in relation to a market which is important for only one gender. A key aim of feminist critique is to reveal instances where gendered experience or impact is overlooked. This aim is motivated by belief that uncritical acceptance of something “can silence or discount women’s experience” of it.<sup>17</sup>

If the possibility of gendered impact is ignored when selecting enforcement projects there is a risk of agencies overlooking the significance of anti-competitive practices whose potential effect is relatively more harmful to one gender.

#### **4. Enforcement that Empowers**

Resisting subjugation or oppression is a classic tenet of feminist legal scholarship. Gender emerged as a category of study as a result of feminists’ struggle against subordination.<sup>18</sup> This module concurs with the view that competition policy “helps to reduce gender inequality when it tackles anticompetitive behaviour and reduces prices in markets that women buy from, and, in particular, in markets that facilitate greater market participation.”<sup>19</sup> This topic explores how agencies might re-orient their approach to competition law so that it empowers one particular gender .

##### *i) Organizational changes*

Competition agencies might make structural or organisational changes. Long proposes the appointment within competition agencies of gender equality task forces and gender equality champions tasked with identifying any aspect of the agencies’ work which “has a gender angle to it, both positive and negative.”<sup>20</sup> The position of Consumer Liaison Officer within the European Commission offers inspiration for the creation of a Gender Liaison Officer with external as well as internal facing duties. Created in 2003, the Consumer Liaison Officer is tasked (in relation to competition law) with functioning as “a contact point for consumer organisations, to alert consumer groups to cases where their input might be useful and to intensify contacts between DG Competition and other Directorates General whose portfolio include consumer interests.”<sup>21</sup>

##### *ii) articulating gender in priorities*

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<sup>15</sup> Kovacic, William E., “Deciding What to Do and How to Do It: Prioritization, Project Selection, and Competition Agency Effectiveness” (2018) 13 (1) *Comp Law Rev*, p. 23.

<sup>16</sup> Honkala, N., “International Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018), p. 88.

<sup>17</sup> Honkala, N., “International Law” in Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018), p. 87.

<sup>18</sup> Auchmuty R. (ed) *Great Debates in Gender and Law* (Palgrave, 2018), p. xiii.

<sup>19</sup> Santacruce- Vasut, E., and Pike, C., “Competition Policy and Gender” (2019) No 4. *Concurrences Review, Art No. 92109*, pt. 40.

<sup>20</sup> Long, S., “Gender inequality, market distortion and consumer welfare: A call to action for competition authorities” Editorial (2019) 10 (5) *Journal of European Competition Law & Practice*, p267,268

<sup>21</sup> Monti, G., *EC Competition Law* (Cambridge University Press, 2012) pp. 99-100.

There is no more central function “to the operation of a competition agency than making decisions about what to do with its powers and resources.”<sup>22</sup> Re-imagining enforcement priorities could entail agencies incorporating gender as a distinct criterion which reframes enforcement priorities.<sup>23</sup> It has been suggested that project selection be reoriented towards more proactive investigation of markets which resonate with female consumers, for example those which form a larger share of females’ expenditure.<sup>24</sup> The particular value of a market study is that it may help to identify, firstly whether the market is working well or whether particular groups are being ‘left behind’ to deal with market power, and secondly which features of the market are driving these effects and ensuring that they persist.<sup>25</sup> It has been proposed that agencies conducting market studies and investigations into abusive conduct might specifically assess “whether female welfare-rather than consumer welfare as a whole” would be adversely affected.<sup>26</sup>

### *iii) Targeting advocacy and education initiatives*

While market studies are clearly important enforcement tools, agencies often have at their disposal other valuable advocacy opportunities. They might design advocacy and educational initiatives which are targeted specifically at one particular gender. Moreover, they might exert their influence with legislators, for example, if called to offer advice on proposed legislation. In Canada, a wide- ranging Gender Based Assessment (GBA) requires the Competition Bureau to assess international trade agreements for gender issues. Another interesting example of a gender sensitive competition law measure is provided by the requirement in Kenya that public procurement tenders include a minimum number of tenders from females.

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<sup>22</sup> Kovacic, William E “Deciding What to Do and How to Do It: Prioritization, Project Selection, and Competition Agency Effectiveness” (2018) 13 (1) Comp Law Rev, p9.

<sup>23</sup> Pike, C., “What’s gender got to do with competition policy?” OECD on the level Blog(March 2018). <https://oecdonthellevel.com/2018/03/02/whats-gender-got-to-do-with-competition-policy/>

<sup>24</sup> Pike, C., “What’s gender got to do with competition policy?” OECD on the level Blog(March 2018). <https://oecdonthellevel.com/2018/03/02/whats-gender-got-to-do-with-competition-policy/>

<sup>25</sup> Santacruce- Vasut, E., and Pike, C., “Competition Policy and Gender” (2019) No 4. *Concurrences Review*, Art No. 92109)

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# Towards cross-pollination between Gender Equality and Competition Policy

Lütz Fabian, Université de Lausanne (UNIL)

*This project tries to identify the links between competition policy and gender equality and to pave the way towards a cross-pollination between gender equality and competition law. First, it will show similarities in the underlying goals and the design of both legal frameworks. Both disciplines can learn from each other while pursuing their respective goals of undistorted competition and equality and non-discrimination.*

*Second, it will show how on the one hand, the enforcement architecture and practice of competition policy can inform and improve the enforcement of gender equality law and on the other hand, how a gender lens can inform the decision making process of competition authorities for questions such as market definition.*

*Third, I will argue that the increased use of algorithms and machine-learning in products and services could have both anti-competitive and discriminatory effects. Price discrimination or discrimination on the basis of sex might be caused by automated decision making or machine learning, which needs to be assessed both from a competition law and gender equality law perspective.*

*Fourth and finally, this calls on both competition and gender equality authorities to join forces and cooperate on issues of mutual interest and benefit. A forum of exchange that brings staff working on competition policy and gender equality at the table to understand the applicable legal rules in the other field will familiarize and enrich both enforcers for their daily work.*

On this basis, understanding the rationales and theoretical frameworks of both competition and gender equality policy and exchanging best practices on enforcement through workshops can help to solve problems created by technology, such as artificial intelligence used in products and services which potentially have anti-competitive (for example in terms of price discrimination) and discriminatory effects on consumers, both women and men.

## Methods and concrete suggestions:

1. The starting point of the approach is to create **knowledge and awareness for gender equality policy** among competition agencies. Practical experience shows, that competition enforcers are reluctant to include other goals such as gender equality into the analysis which is typically focused and often limited to an assessment of the (anti-)competitive effects.
2. Using a **behaviorally (economic) informed approach** to the competition and gender equality law to understand the decision making process. This enables to explore potential biases of enforcers and the market participants and to better understand the rationale of decisions taken by humans and compare this to potential decisions informed or taken by automated decision making.
3. Bring together academics and enforcers in a **conference** to exchange on the theoretical background of both competition and gender equality law as first step to create the knowledge and awareness of competition and gender equality law enforcers.
4. On the basis of this theoretical exchange, create **work-shops and working groups** between competition and gender equality enforcers to exchange best practices. This enables a regular exchange on problems of mutual interest, for example if a market

analysis requires particular gender knowledge or if a non-discrimination case contains elements of market power because a given dominant firm offers services that discriminate between women and men and the market situation does not offer an alternative due to lack of competition.

5. Drafting **guidelines** for both competition and gender equality authorities on how the gender or the competition lens can be applied when assessing cases. This could include suggestions for cases to choose the right tools of competition law or gender equality law to regulate a given situation. This toolbox can guide the enforcer when assessing a specific case and would lead to a more gender sensitive approach to competition policy.

- Competition agencies will benefit from gender mainstreaming and will be aware of genderrelevant scenarios for competition enforcement. Concretely, they will assess markets differently, if they detect gender sensitive product markets and will take decisions more in line with the realities of consumer markets.
- Creating awareness and knowledge on both competition and gender equality enforcers opens doors for cooperation and ultimately improves the decision making process.
- Enforcers will understand the advantages and the limits of both legal tools and will be equipped with the tools to better exercise their discretion as law enforcers
- A **cross-pollination between competition and gender equality policy** will not only create a gender-sensitive competition enforcement but also a gender equality policy informed by competition policy.



## SUPPORT FOR FEMALE WORKERS AS AN ANTITRUST ENFORCEMENT PRIORITY

Mariateresa Maggiolino (Bocconi University, Italy)  
Laura Zoboli (University of Warsaw, Poland)

In general, women cover less prestigious and remunerative positions than men do, even more so in Mediterranean countries.<sup>1</sup> This is also because women are *required* to play a crucial role within their families, by taking care of children and the elderly.<sup>2</sup> In other words, these unavoidable caring duties prevent women from fully exploiting their potential, by sapping them of the necessary time and resources to find and maintain adequately remunerative jobs, full-time employments or entrepreneurial activities.

On the other hand, as the experience of the Scandinavian countries demonstrates, the availability of high quality and low-priced care services can give women the opportunity to *choose* how to balance their responsibilities in their private and professional lives.<sup>3</sup> Think, for example, about the offer of: frequent and diffused forms of transportations, canteen services, extra-curricular recreational activities for children; leisure activities, nursing homes and day care-centers for the elderly.

As is well known, competition leads economic agents to innovate and offer better products at lower prices, while anti-competitive behaviors, conversely, allow firms with a less-than-mediocre offering to stay afloat.

Therefore, if antitrust authorities and agencies want to play a direct and effective role in supporting women, they do not need to engage in complex policy battles aimed at counting the protection of women's rights and interests among the goals of competition law. They can simply follow their original mission: to enforce antitrust law against those firms that restrain competition in care services and, more in general, in all those services that women need to strike a better work-life balance. For example, antitrust authorities could effectively increase women's welfare by timely prosecuting cartels on tenders for canteen services. Indeed, such anti-competitive behaviors produce inefficiencies to which women must then respond with their own resources, thus taking time and energy away from their work.

Given these premises, our project would develop with the following two steps.

1. An empirical analysis to:
  - a. Map those markets which offer crucial services in support of women's caring activities.
  - b. Verify if and how often antitrust authorities and agencies have intervened in such markets.
  - c. Classify the most frequent anticompetitive practices occurring in these markets.
  - d. Assess the impact of antitrust authorities and agencies interventions.
2. Policy recommendations meant to:
  - a. Prioritize in the antitrust authorities' agenda the safeguarding of competition in those markets that provide services in support of women's caring activities.
  - b. Detail the most frequent anticompetitive behaviors and the most effective remedies adopted (or that could be adopted) against them, to provide a framework for action.

Promote and orient the advocacy activities carried out by competition authorities to foster a pro-competitive regulatory environment in the identified market areas, and to contribute to the increase in the offer of crucial services in support of women's caring activities

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<sup>1</sup> See OECD data (2010/2019) on gender wage gap, full-time equivalent employment rate by sex, share of female managers, female share of seats on boards of the largest publicly listed companies.

<sup>2</sup> See the data on the time spent daily in unpaid care work, paid work and total work, by sex, has published in OECD, *Women at Work in G20 countries: Progress and policy action*, Paper prepared under Japan's G20 Presidency, 2019, p.

<sup>3</sup> Strengthening long-term care and care leave provision has been identified as the first of the actions required in G20 countries to boost women's participation in the labour market and reduce gender gaps in job quality. Indeed: "Women continue to take on a disproportionate burden of long-term care work and this may become an increasingly important limitation on their participation in paid work. Therefore, long-term care provision needs to be strengthened as well as access to care leave for both women and men"; OECD, *Women at Work in G20 countries: Progress and policy action*, Paper prepared under Japan's G20 Presidency, 2019..

# Applying Gender as a Lens for Case Prioritisation

28 September 2020

## OVERVIEW

Whilst rigorous competition benefits consumers, it does not benefit all consumers equally. Women and people of colour<sup>1</sup> are amongst the most disadvantaged and vulnerable sections of society. This is true in their capacity as consumers, but also as workers, entrepreneurs, shareholders and board members.

There is an ongoing debate over the consumer welfare standard and the extent to which it should be overhauled to take into account a broader set of social, economic and environmental goals. What has not been explored is the possibility that case prioritisation by enforcement agencies is driven by the desire to protect the prototypical consumer that is the focus of economic modeling under neoclassical price theory. Competition authorities around the world have different specific mandates, whether to ensure the proper functioning of the market, to protect competition or to protect consumers. But all authorities must perform their mandate for the benefit of all economic actors within their jurisdiction. There is a possibility that competition law enforcement has been failing women and global majority groups through an excessive focus on the preferences of *homo economicus*.<sup>2</sup>

This project will seek to identify a set of screens and tools that competition authorities can use to ensure that they are fulfilling their mandates with respect to all citizens, with particular reference to issues of gender.

## RESEARCH PLAN

The project will start by giving an overview of the causes of gender inequality and linking these to competition issues. The aim will be to base any development of a case prioritisation tool on

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<sup>1</sup> As is well-understood within feminist literature, the issues of gender and race (and socio-economic class) are inextricably connected. While this project will focus on a gender lens, specifically in relation to “women”, aspects of race and class will also feature to underscore the point that middle- and upper-income white women may be less disadvantaged than people of colour (both male and female) as well as white working class people and those who identify as a non-binary gender.

<sup>2</sup> See, for example, Katrine Marçal, *Who Who Cooked Adam Smith's Dinner?*.

research that demonstrates that intervention through competition enforcement could make a positive contribution.

The project will then look at how agencies determine case prioritisation and the extent to which that process is transparent and subject to review or stakeholder consultation. We will identify best practices and any existing case prioritisation tools, building on the outputs from the OECD *Workshop on market studies selection and prioritisation of sectors and industries* in 2017.<sup>3</sup> In doing this we will consider examples from OECD countries but will also look at work by authorities that are responsible for the enforcement of competition laws that expressly mention specific groups in the substantive law (for example, South Africa's protection of historically disadvantaged groups).

We will also compare the latest Annual Reports of a defined set of competition authorities to gain insights into how case prioritisation is presented to the public. For example, in recent Annual Reports the UK's Competition and Markets Authority has highlighted a need to protect "vulnerable consumers" and has pursued cases accordingly.<sup>4</sup>

The project will build on the economic and legal literature that considers how gender issues intersect with competition.<sup>5</sup> This research will be used to identify potential areas of focus for competition authorities which may be incorporated into a case prioritisation tool. Examples may include:

- **sector focus** -- are there particular sectors, like childcare and elderly care, in which a lack of competition harms women in particular, as consumers? Or sectors selling essential goods where market imperfections lead to disproportionate impacts of market power over women or people of colour?
- **labour market impacts** -- looking at whether mergers and other investigations into sectors that disproportionately employ women (such as retail) should be a priority for labour market and monopsony concerns,<sup>6</sup> and or whether there are specific sectors where monopsony power is particularly strong against women.

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<sup>3</sup> OECD, 'Workshop on market studies selection and prioritisation of sectors and industries', 2017. Available at: <https://www.oecd.org/daf/competition/market-studies-workshop-on-selection-prioritisation-of-sectors-industries.htm>

<sup>4</sup> CMA Press Release, 'CMA publishes Annual Report 2019/2020', 14 July 2020. Available at: <https://www.gov.uk/government/news/cma-publishes-annual-report-20192020>. See also, CMA, 'Consumer vulnerability: challenges and potential solutions', 28 February 2019. Available at: <https://www.gov.uk/government/publications/consumer-vulnerability-challenges-and-potential-solutions/consumer-vulnerability-challenges-and-potential-solutions>.

<sup>5</sup> To a certain extent this will overlap with the literature that looks at competition and poverty, for example World Bank, 'Distributional Effects of Competition: A Simulation Approach', May 2019. Available at: <http://documents1.worldbank.org/curated/en/889601556800454904/pdf/Distributional-Effects-of-Competition-on-A-Simulation-Approach.pdf>.

- **exploitative conduct** -- typically enforcement authorities around the world have focused on exclusion cases, but exploitation may have a particular gender angle. We would look at whether the US literature on non-competes, no-poach agreements, forced arbitrations, and employee safety is applicable in other OECD countries.<sup>7</sup>
- **common ownership** -- after summarising the limited literature on the gender spread of shareholdings the project would consider the extent to which the reality of unequal shareholdings between rich and poor<sup>8</sup> and the well-documented position of income inequality between men and women gives prioritisation weight to common ownership concerns in sectors where women are substantially represented amongst consumers (but not amongst shareholders).
- **behavioural bias** -- looking at whether issues of behavioural bias amongst consumers in general (bounded self-interest, bounded will-power, bounded rationality etc) implicate particular practices or sectors for prioritisation by authorities when applying a gender lens.
- **entrepreneurial finance** -- considering whether concerns about discrimination against female entrepreneurs raising startup financing have a competition dimension.<sup>9</sup>
- **AI** -- looking at particular concerns about bias within AI and algorithmic treatment of consumers and workers.

The project will consider the necessity of formal statements binding competition authorities to consider women and minorities in case prioritisation, how authorities might approach case prioritisation with a gender lens and how women and minorities might be consulted in the prioritisation process.

<sup>6</sup> OECD, 'Competition in Labour Markets', 2020. Available at: <https://www.oecd.org/competition/competition-in-labour-markets-2020.pdf>; Hirsch, B., T. Schank and C. Schnabel (2010), "Differences in Labour Supply to Monopsonistic Firms and the Gender Pay Gap: An Empirical Analysis Using Linked Employer-Employee Data from Germany", *Journal of Labor Economics*, vol. 28(2), pp. 291-330.

<sup>7</sup> Lipsitz, Michael and Starr, Evan, *Low-Wage Workers and the Enforceability of Non-Compete Agreements* (August 22, 2020). Available at SSRN: <https://ssrn.com/abstract=3452240>.

<sup>8</sup> Joshua Gans et al., 'Inequality and Market Concentration, When Shareholding is More Skewed than Consumption', NBER Working Paper No. 25395, December 2018.

<sup>9</sup> Sally Hubbard, 'How Monopolies Make Gender Inequality Worse', *Forbes*, 20 December 2017 Available at:

<https://www.forbes.com/sites/washingtonbytes/2017/12/20/how-monopolies-make-gender-inequality-worse-e-and-concentrated-economic-power-harms-women/#139577961b11>.

## ABOUT THE RESEARCH TEAM

Michelle Meagher is an expert in competition law and corporate governance. She is a competition lawyer who has previously worked at the OFT, the Federal Trade Commission and in private practice for Magic Circle law firms. She has also worked on competition policy in the Global South as a consultant for the International Finance Corporation (World Bank Group). Michelle is one of the Founders of the Inclusive Competition Forum, a think tank concentrating on providing research and insight into mechanisms for creating sustainable and equitable competition law and policy. She is also a Senior Policy Fellow at the UCL Centre for Law, Economics and Society. Michelle is regularly commissioned by a variety of organisations and NGOs to provide expertise and applied research.

Dr Beverley Williamson is an experienced researcher, having obtained her PhD in competition law, she also worked at the Competition Commission as a researcher in the Legal Department. Bev has worked as a consultant for a number of Premiership and Championship rugby clubs, delivering reports on various aspects of the intersection between professional rugby union and competition law. Beverley is a Senior Fellow at the Inclusive Competition Forum, and has been commissioned to perform applied research for various NGOs. Beverley also works as a consultant, providing innovative competition compliance training solutions.

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# COMPETITION LAW AND GENDER: TWO INGREDIENTS FOR DEBATE

(PROPOSAL I)

Inês Neves\*

## I. *Agreements on gender issues*

According to Article 7 of the TFEU, «The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers». In addition, Article 9 provides that «In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, **the guarantee of adequate social protection, the fight against social exclusion**, and a high level of education, training and protection of human health». Finally, according to Article 6 of the TEU, «The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties». As a consequence, and even leaving aside the debate regarding Competition Law goals, its application and enforcement should not undermine other EU policy fields. The «gender gap», along with other discriminating factors are one of those areas for which the EU is responsible.

Undertakings are required to respect human rights, such as the right to non-discrimination, and Member States should also promote and protect people from being discriminated. Gender is one of the most problematic factors of discrimination. For that, there are some Corporate Social Responsibility principles and initiatives to which the companies might already adhere. Nevertheless, not only there is a considerable range of practices that are still not within the scope of those codes of conduct, but it is also truth that many of them are only voluntary. This being said, there is no proper guidance as to the agreements or other forms of coordination between undertakings, aimed at reducing discrimination, that could therefore be exempted from the application and scrutiny of Competition Law. This *status quo* requires them to be systematically subject to an obligation of justification under article 101(3) of the TFEU, which

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might, not only undermine the undertakings' readiness to «join» such fight, but also represent a barrier to the promotion and effectiveness of one of the most important EU principles.

**IN ORDER TO FIGHT THIS PROBLEM, WE SUGGEST:**

- **The approval and publication of Guidelines on «gender agreements» (related to the fight against gender discrimination) that explain which of those *i*) will not fall under the cartel prohibition and will therefore be allowed and not considered to infringe Competition Law and *ii*) which agreements will be eligible for the application of the exemption laid down in Article 101(3) of the TFEU. Agreements regarding the promotion of women in the workplace, the valuation of domestic labour, the workload, flexible working hours, the guarantee of fair wages, among others would be «strong candidates».**
- **CONSIDERATIONS OF THE SAME TYPE SHOULD ALSO PLAY A ROLE WHEN IT COMES TO THE DETERMINATION OF THE FINE. THE EUROPEAN COMMISSION ('EC') MIGHT TAKE ACCOUNT OF THE CONTEXT SURROUNDING THE AGREEMENT. IN OTHER WORDS, EVEN IF THE AGREEMENT DOES NOT FULFIL THE CONDITIONS TO BE EXEMPT OR EVEN TO BE JUSTIFIED, THE EC SHOULD CONSIDER ITS POSITIVE IMPACT ON THE REDUCTION OF A SITUATION OF INEQUALITY AS A MITIGATION CIRCUMSTANCE<sup>1</sup>.**

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<sup>1</sup> Even for the ones who consider that the goal of Competition Law cannot rely on social welfare, it's undeniable that the Commission and Competition Policy need to be weighted with the fundamental rights enshrined in the Charter. Consequently, the EC has not only the duty of not infringing those rights, but also a positive obligation to protect those same rights.



# COMPETITION LAW AND GENDER: TWO INGREDIENTS FOR DEBATE

## (Proposa II)

Inês Neves\*

### I. Merger control

According to Recital 23 of Regulation No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ('Regulation'), «the Commission must place its appraisal within the general framework of the achievement of the fundamental objectives referred to in Article 2 of the Treaty establishing the European Community and Article 2 of the Treaty on European Union». Article 2 of the TEU provides that «**The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.** These values are common to the Member States in a society in which pluralism, **non-discrimination, tolerance, justice, solidarity and equality between women and men prevail**». In countries such as Portugal, a Legal Framework for Gender Impact Assessment of Normative Acts<sup>1</sup> applies. Inspired by such regime, **we propose that**, besides the factors provided for in Article 2 of the Regulation, **the EC also assesses the merger's impact on gender inequality.**

- **The «gender impact assessment» will involve the collection of information regarding, among others, the situation and the roles of men and women in the context in which the merger will occur, the existence of distinct limitations between men and women to participate and obtain benefits arising from the merger or the impact of the merger on the individual realities of men and women, namely as to their consistency with a more equitable relationship between them or the reduction of gender stereotypes that lead to the maintenance of negative traditional social roles.**
- **In order to avoid that the procedure is too burdensome for the undertakings and even for the EC, the latter should have the power to waive the impact assessment, in cases of urgency or when the markets at issue or the context of the merger have**

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<sup>1</sup> See Law no 4/2018 of 9 February.

already been assessed in previous procedures, which shall be expressly substantiated by the Commission.

- **The prior gender impact assessment must focus and compare the starting situation (prior the merger), the prediction of the results to be achieved and the valuation of the gender impact and might also include the formulation of proposals/remedies, when appropriate.**
- **The EC will conclude that the merger has a) negative impacts, when it reinforces gender inequalities; b) neutral impacts, when gender is not relevant nor affected by the merger; or c) positive impacts, when the merger is gender-sensitive and promotes equality between men and women. This assessment as well as proposals for improvement or recommendations, if any, should be included in a summary report sent to the undertakings.**
- **Compliance with such recommendations or proposals should be considered when deciding to declare a concentration compatible with the common market.**



# **GENDER INCLUSIVE COMPETITION POLICY – DEVELOPING THE EVIDENCE RESPONSE TO THE CALL FOR PROPOSALS LAUNCHED BY THE OECD WITH THE SUPPORT OF THE CANADIAN GOVERNMENT**

## **1. INTRODUCTION**

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The Competition and EU Law Group of *Cuatrecasas* sets out below its response to the Call for Proposals on Gender Inclusive Competition Policy launched by the OECD with the support of the Canadian Government and the Canadian Competition Bureau. Specifically, this document has been prepared by lawyers María López Ridruejo, Iratxe Aguirre and Marta Simón, based in Madrid, Spain.

We welcome the opportunity to respond to the Call for Proposals on how a gender inclusive competition policy can be created. As such, we have sought to share our views on certain points that could be researched to help drive change in the matter. We would be delighted to discuss the following points in more detail with the OECD.

## **2. GENERAL NEED FOR RESEARCH ON THE OBJECTIVES OF COMPETITION POLICY**

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In our view, it is crucial to define how we can include gender considerations into competition policy and how competition agencies can, as a consequence, treat gender issues as a priority.

First, there is substantive evidence of the cost of gender inequality and the potential benefits of eradicating it (DAF/COMP/GF(2018)4). Therefore, gender inequality is an economic issue that should be incorporated in competition policy objectives. More studies on actual quantification of the problems of gender inequality would be welcome.

However, we also believe that rethinking the interpretation of consumer (or total) welfare is a possibility to address, in order to include other goals in competition policy such as gender equality. We believe that this can be done, especially taking into consideration the fact that some competition authorities are progressively incorporating “public interest” goals, such as climate change, in their priorities.

In our view, if competition law can address sustainability issues, it should try to tackle gender inequality too.

We must also not forget that there are some jurisdictions that pursue the public interest (i.e. the consideration of non-economic goals related to consequences other than efficiency, DAF/COMP/WP3/2016), such as South Africa, which prioritizes race as part of the mandate of the competition authority.

### 3. PRACTICAL INSIGHTS

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#### 3.1. Efficiency considerations

In July 2020, the Dutch Competition Authority (ACM) published draft guidelines<sup>1</sup> on “sustainability agreements”, stating that anticompetitive agreements would be permitted if their benefits to society (i.e. lower carbon emissions) outweigh the disadvantages to users (i.e. price rise for users). In September 2020, the Hellenic Competition Commission announced that it would release its own sustainability guidelines. In fact, the Executive Vice President of the European Commission, Ms. Margrethe Vestager, announced on September 22 that they are working on a public consultation on competition rules and sustainability.

The above prove as good examples of how “new” considerations, such as sustainability or gender equality, could be incorporated in the analysis of the efficiencies of agreements that could restrict competition.

Efficiency considerations are also a factor in abuse of dominance analyses but often only indirectly and at the end of the investigation. We propose that gender equality could also be considered in this context as a new type of efficiency that could offset competitive harm in abuse of dominance cases.

#### 3.2. STATE AID CONDITIONS AND MERGER CONTROL REMEDIES

Some EU Member states have taken advantage of state aid measures to impose “green” or “climate” conditions on beneficiary companies. In May 2020, the European Commission approved a €7 billion support to Air France<sup>2</sup>, with the commitment to reduce domestic CO<sub>2</sub> emissions by 50% by 2024. Ms. Vestager supported these “plans for certain green policy choices” as regards Air France and stated that “Member States are free to design measures in line with their policy objectives and EU rules.”

State aid measures could be used to tackle gender inequality as a priority of competition policy (i.e. granting aid subject to the implementation of training programs on gender equality and women empowerment, or to the implementation of measures to improve women employees’ conditions on jobs that are usually performed by men; establishing quotas or equal pay commitments, etc.). We believe that the above could also be applied as per remedies (and/or conditions) offered in merger control clearances.

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<sup>1</sup> See the press release here: <https://www.acm.nl/en/publications/draft-guidelines-sustainability-agreements>

<sup>2</sup> See the press release here: [https://ec.europa.eu/commission/presscorner/detail/es/ip\\_20\\_796](https://ec.europa.eu/commission/presscorner/detail/es/ip_20_796)

#### **4. CONCLUSIONS**

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We believe there is indeed potential for introducing gender-oriented reforms into competition policy and competition authorities would need to start including gender issues as a priority. How can this be done should be a topic of research for the OECD.



## CALL FOR PROPOSALS

### Gender inclusive competition policy – Developing the evidence

### *The role of childcare in competitive markets*

Long Sarah, Euclid Law

#### **Introduction**

The recent COVID-19 crisis has brought to the fore an often unrecognised, but crucial aspect of how business and society functions – childcare. When schools, nurseries and other care providers were forced to shut, businesses across the world learnt the hard way how critical childcare is to staff and, therefore, the ability for a business to operate. Early research indicates that this resulted in “a likely increase in pre-existing disparities between the childcare contributions of mothers and fathers.”<sup>27</sup> A UK survey of 19,950 mothers and pregnant women revealed that 15% either had been, or expected to be made redundant, with 46% of those saying that a lack of childcare provision played a role in their redundancy.<sup>28</sup> With UK working mothers being considered as ‘sacrificial lambs’<sup>29</sup> in the coronavirus childcare crisis, the potential effect on gender equality is stark.

Data from the UK Office for National Statistics (ONS) shows that in 2019, 75.1% of mothers with dependent children were in work in the UK, compared with 92.6% of fathers with dependent children.<sup>30</sup> A 2018 report<sup>31</sup> from the Council for A Strong America found that during a typical year, employers lose about \$13 billion in potential earnings, productivity and revenue due to inadequate child-care resources. Yet, despite the essential nature of childcare to any business that has staff with children, the role of childcare in competitive markets is not well understood.

#### **Potential areas of focus**

There are various areas this research could focus on:

- *Potential economic implications related to childcare*
  - Women leaving the (paid) workforce to look after children (unpaid)
  - Companies needing to recruit/replace women leaving due to childcare obligations
  - Lost revenue from ad hoc absences due to childcare requirements
  - Initiatives to improve childcare provision within the workplace (e.g. onsite nurseries, emergency childcare provision, childcare voucher/tax free childcare schemes)
  - Reduced ‘spending power’ due to payment of childcare fees

<sup>27</sup> <http://cep.lse.ac.uk/pubs/download/cepcovid-19-002.pdf>

<sup>28</sup> <https://pregnantthenscrewed.com/childcare-covid-and-career/>

<sup>29</sup> <https://www.theguardian.com/money/2020/jul/24/uk-working-mothers-are-sacrificial-lambs-in-coronavirus-childcare-crisis>

<sup>30</sup> Data from April to June 2019 -

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/familiesandthelabourmarketengland/2019>

<sup>31</sup> <https://strongnation.s3.amazonaws.com/documents/602/83bb2275-ce07-4d74-bcee-ff6178daf6bd.pdf?1547054862&inline;filename=%22Want%20to%20Grow%20the%20Economy?%20Fix%20the%20Child%20Care%20Crisis.pdf%22>

- Sectors most affected by childcare provision e.g. those involving significant female employment, rigid or inflexible hours, requiring significant travel etc.
  - How competition is working in the market for the provision of childcare
- *Potential social and regulatory implications related to childcare*
    - Lack of women in senior positions affecting compliance (including competition law compliance)
    - Lack of senior men involved in full time childcare discouraging junior men to join childcare profession and/or look after their own children full time
    - Lack of clarity around employee obligations regarding childcare/parental rights

Research focused on these topics could enable a far better understanding of how childcare contributes to companies, the economy, and ultimately consumer welfare. Does the provision, or lack, of childcare effect the competitiveness or behaviour of a company? What links can be drawn between competitive markets that work well, and the provision of childcare? Would stimulating competition within the childcare market have pro-competitive knock on effects for businesses or consumers?

### ***Existing research/evidence***

While it has not been possible to carry out a detailed assessment of existing research or literature relating to childcare and competitive markets, there is some evidence available that could be used as a starting point.

- The Japanese FTC carried out a market study on the childcare sector in 2014, looking to identify the reasons for the lack of supply.<sup>32</sup>
- The European Platform for Investing in Children (EPIC)<sup>33</sup> has a series of policy memos and briefs, including a report on how childcare, parental leave and flexible working arrangements interact in Europe.<sup>34</sup>
- The UK CMA issued an open letter to early years providers as a result of alleged unfair practices following disruptions caused by COVID-19.<sup>35</sup>
- In Illinois, a child-care provider was investigated for including a non-compete for all of its employees.<sup>36</sup>

### ***How may a competition authority act in response to the findings?***

There are various ways in which competition authorities could act on any findings:

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<sup>32</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2014/June/140625.html>

<sup>33</sup> <https://ec.europa.eu/social/main.jsp?catId=1246&langId=en>


<sup>34</sup> [https://www.rand.org/pubs/research\\_reports/RR554.html](https://www.rand.org/pubs/research_reports/RR554.html)

<sup>35</sup> <https://www.gov.uk/government/publications/cma-open-letter-to-the-early-years-sector>

<sup>36</sup> [https://wp.law.harvard.edu/files/wp/files/webpage\\_materials\\_papers\\_madigan\\_flanagan\\_june\\_13\\_2018.pdf](https://wp.law.harvard.edu/files/wp/files/webpage_materials_papers_madigan_flanagan_june_13_2018.pdf) and Speech by FTC Commissioner Rebecca Kelly Slaughter: [https://www.ftc.gov/system/files/documents/public\\_statements/1561475/slaughter\\_-\\_noncompete\\_clauses\\_workshop\\_remarks\\_1-9-20.pdf](https://www.ftc.gov/system/files/documents/public_statements/1561475/slaughter_-_noncompete_clauses_workshop_remarks_1-9-20.pdf)

- Opening a market study/investigation into the market for provision of childcare
- Targeted enforcement action against childcare providers breaching competition law
- Considering efficiencies in mergers either in the childcare sector or between companies that could improve their childcare offering if they merged
- Considering the role of consumer law when tackling cases relating to childcare
- Considering reductions in penalties for competition law infringements for clear evidence of improvements in ethical behaviour of the company, which could include steps to improve childcare provision for employees.





## Empowering women through Competition Law regime: A Case Study of working women in the organized sector in Delhi NCR region(India)

### ABSTRACT:

Several United Nations studies have shown that women comprise of just 39% of the workforce and hold only 27% in managerial positions<sup>1</sup>. Over the years there has been a struggle to ensure gender equality and equal pay. Various market studies portray that though women participation in the workforce has increased however this has been mainly constrained to lower levels of businesses or informal sectors. Studies have also reflected that less than 30% of senior management is held by women<sup>2</sup>. From the point of view of competition law, Becker<sup>3</sup> has construed the same as taste-based discrimination. Such taste-based discrimination has the ability to thrive, despite the compromise made on efficiency due to such discrimination, owing to lack of significant competition in the 'market' in which a company operates.

Gender based discrimination is not only limited to the field of employability and entrepreneurship but also trickles down to gender-based pricing. Various researches have shown that women make less than what their male counterparts earn for the same job. Adding to this inequality is the fact that women also end up paying more for the same product or services available by men. One common example that might be evident is the salon services which charge discriminatory prices for the same service for men and women. Competition Law in most jurisdictions is responsible to ensure non-discriminatory terms to consumers and increase the efficiency of a respective market. There is a room for implementation, development and to analyze the possibilities, how a Competition Law regime can ensure efficiency and scope of reduction in gender/ taste-based discrimination.

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<sup>1</sup> Department of Economics and Social Affairs, Progress on the sustainable development goals, United Nations

<sup>2</sup> <https://www.peoplesmatters.in/article/leadership/2019-sees-the-highest-percentage-of-women-in-senior-management-globally-report-21036>

<sup>3</sup> Becker, G. (1957), The Economics of Discrimination, Second Edition, The University of Chicago Press Economics

In addition to such discrimination already existing, we often (almost every time) fail to account for the “manpower” spent by women tasked to accomplish the unaccounted unpaid work. Mostly women, not only in India but also around the world are responsible for most of the unpaid domestic work in a household. Women spend on average between three and six hours on unpaid care activities, while men spend between half an hour and two hours<sup>4</sup>. This indirectly increases the purchasing power of men to women due to such tasks performed (Care giving, domestic, additional responsibilities, etc.) This increases the pay gap between men and women and also in the number of available effective manhours/workhours available to them. A study has shown that if all the unpaid work has been accounted for it would constitute the highest portion in a GDP system. It remains to be seen how the purchasing power of women in this level would be affected if the unpaid work is monetized, organized, and made competitive. There is a possibility of applying Competition Law at this level to ensure fair pay, without any abuse of dominance. Competition Law can be one of the effective tools to reduce gender-based wealth gap prevalent in the society.

Another area prone to gender-based discrimination or rather discrimination due to lack of awareness can be seen in the field of investments. It is quite evident that women do not have access to investments in the same capacity or volume to that of men. In the year 2019, only approx. 2.7% of total investments was received by women and this is even worse for women of color.<sup>5</sup> This may be due to lack of confidence shown in women to tackle the problems associated with businesses. This patriarchal notion is imminent to change as it lacks any merit in the assumptions. Also coupled with this notion is often the lack of awareness amongst the predominantly male dominated venture capital firms to identify a successful business idea which are associated with unpaid domestic work as described above (e.g. baby care, domestic work, elderly care etc.), which are predominantly fulfilled by women. This not only affects women entrepreneur’s access to a level playing field with their male counterparts but also hinders the growth of the unpaid segment which has the potential to be monetized to a great extent, which directly or indirectly increases purchasing power of women.

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4 Ferrant, G., Pesando L., Nowacka K., (2014). Unpaid Care work: The missing link in the analysis of gender gaps in labour outcomes, OECD Development Center.

5 Hinchliffe E., Funding for female founders increased in 2019-but only to 2.7%, Fortune <https://fortune.com/2020/03/02/female-founders-funding-2019/>

This not only helps in uplifting the lower income unorganized sectors in general but also increases the conditions of work and terms of employment in this level. The possibility of harnessing Competition Law as a tool to create awareness amongst the unorganized/ unpaid sectors to attain gender equality needs to be analyzed. This research aims to do the same by focusing on a specific geographical area in Delhi NCR region in India where data from women of all strata can be used for an empirical research.

Most of the women employment at least with respect to Indian society is constrained to unorganized sector<sup>6</sup>. This may be due to cultural constraints of the society, where it is often true that there exist no solid terms of employment, majorly exploiting the workforce and the produce (services included). In this study we aim to analyze the gender specific challenges that women face while working in an organized sector and how Competition Law can be a tool to make these sectors more competitive to improve women empowerment.

#### **AIMS AND OBJECTIVES:**

- 1) To identify the relevant markets (unpaid or paid) where women currently are employed or spend essential working hours accomplishing.
- 2) To identify areas where women participation is minimal due to entry barriers (can be social restrictions or preferential treatment).
- 3) To identify scope of Competition Law as a tool to resolve the gender gap/ discrimination prevalent in those markets.

#### **HYPOTHESIS:**

It is assumed that there is a possibility to identify the relevant markets where women "ideal" work hours are spent (paid/ unpaid), where antitrust enforcement has the capability to rectify to an extent, if not resolve the problems pertaining to gender discrimination.

#### **RESEARCH QUESTIONS:**

1. Scope of Competition Law as a tool to enhance gender equality?
2. What are the relevant areas where women mostly spend productive work hours?
3. Whether Competition Law enforcement can positively affect the above relevant markets?

## **RESEARCH DESIGN:**

*Primary Data:* Involves empirical research. The study will involve indulging with various entities to come up with a data to identify the relevant areas/ markets where women are primarily exploited (unpaid work included) and identification of instances of discriminatory pricing (gender based). The study shall be undertaken by the Indian Institute of Corporate Affairs in region of Delhi NCR area where it is located. The analysis of the data will be used to identify areas where women participation is minimal due to entry barriers followed by analyzing tools in Competition Law to resolve the gendergap/ discrimination prevalent in those markets

*Secondary Data:* Involves doctrinal research, where existing literature including case studies is analyzed to discover the possibility to address the above gender-based discrimination and to increase the purchasing power/ capability of women at large.

### Research Methodology:

**Study Population and Sampling:** The primary research involves collecting data from women to identify difficulty or challenges faced by them while engaging in employment including data on market dynamics to identify sectors where women concentration is higher for possible antitrust enforcement opportunities. The proposed data will be collected by way of predesigned questionnaire. The sample size will be collected based on the data of the company present on the internet either in directories or websites of the various industrial associations in Delhi NCR region/Gurgaon.

### **TIME PERIOD OF THE STUDY: SIX MONTHS**

### **Implications and Knowledge Contribution of the study**

**Practical Implications:** These responses will reflect the contemporary trend and practices. Based on the responses on the questionnaire, major areas where Competition Law intervention is required can easily be highlighted to ensure gender equality.

**Theoretical Implications:** The case study and conclusions thereof can be a basis for further research in the area.

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<sup>6</sup> Monika Banerjee, What Work Choices Are Indian Women Making and Why? (Accessible at <https://thewire.in/women/indian-women-work-care-informal-sector>)



## **Towards a gender-proof conception of the consumer in competition law**

### **Proposal under the OECD call for a gender-inclusive competition policy**

**Prof.dr. Linda Senden and Italo Leone, LL.M Law & Economics, Utrecht University, IOS-Hub Gender, and Diversity,**

<https://www.uu.nl/en/research/institutions-for-open-societies/gender-and-diversity>. Contact details: [l.a.j.senden@uu.nl](mailto:l.a.j.senden@uu.nl) or tel. 0031-620620084

The principle of gender equality has gained tremendous ground and legal protection under the European Treaties over the past decades. Starting with Article 119 EEC-Treaty with a focus on the realization of equal pay for the same work for men and women, there is now a whole range of provisions contained in the TEU, the TFEU, and the Charter of Fundamental Rights of the EU,<sup>1</sup> which relate to many other aspects of gender equality and which have been further substantiated in EU Directives. These aspects include employment, care, pregnancy and maternity, pensions, and access to goods and services. As such, the Court of Justice of the EU has also recognized the fundamental rights nature of the principle of gender equality and in their capacity as Treaty drafters, the Member States have also committed themselves to mainstream gender equality in all of its policies and activities (arts. 8-10 TFEU). The Treaty of Lisbon also introduced the aim of creating a 'social market economy', which combats social exclusion and discrimination and that shall promote equality between women and men and social justice and protection (art. 3(3) TEU).

This revamping of the European Union through the Lisbon Treaty and the enhanced setting and protection of social goals, emphasized by the more recent establishment of the Pillar of Social Rights, marks a fundamental and systemic shift in perspective of what we understand by markets within the context of the EU and EU law. However, its impact on antitrust laws has been somewhat minimal and its fundamental design and approach has largely remained unchanged despite the obligations that this systemic change has brought with it. This is paradoxical to the extent that competition policy concerns were at the very heart of Article 119 EEC because of the concern of France that unequal pay for men and women in the other Member States would put it at a competitive disadvantage. Seemingly, because of the recognition of gender equality as a self-standing fundamental right, it has grown apart from this economic rationale.

Therefore, the project that we propose aims at the reconciliation between competition law and gender equality, not only as two important EU policy areas whose goals, development, and legal framework need to be coherent and attuned to one another,<sup>2</sup> but also as a means to advance the key requirements that competition agencies need for the promotion of greater consumer protection. To this end, the research project investigates the incorporation of gender equality, and equality more in general, into the concept of consumer.

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<sup>1</sup> Arts. 2, 3(3), 6 TEU, 8, 9, 10, 19 TFEU and 21 and 23 CFR.

<sup>2</sup> See art. 7 TFEU underscoring such need.

In this sense, a systematic interpretation of EU law that aims to harmonize the idea of consumer welfare in all legal fields, in line also with the aforementioned mainstreaming obligation, could benefit and enhance the antitrust system of the EU. Therefore, gender could be understood as a specific dimension of the concept of consumer adopted by competition law and, therefore, as part of its current objective of protecting consumer welfare.

However, this vision is not short on challenges. As is common knowledge in antitrust circles, the concept of consumer welfare has classically been confused with economic efficiency. This is evidenced, for example, by the preference to understand consumers as customers in a transaction (as intermediary firms and not as final consumers). However, we must overcome this dichotomy in order to fulfill the gender equality mainstreaming duties of competition agencies. Therefore, we must aim not only to fight potentially abusive behaviors such as third-degree price discrimination schemes based on gender ("pink taxes"), which take advantage of information asymmetries and biases in consumer behavior but to also establish the necessary theoretical formulations in the defense of all disadvantaged consumers. This means that we must develop our concept of consumer in view of the Union's social values but also from an information and behavioral economics perspective.

Looking at consumer protection through a gendered lens could provide us with the appropriate framework for assessing market structures and anti-competitive practices. As such, this framework would give us insight into how price-discriminated markets work by illustrating, for example, how gender has been leveraged to lock-in consumers into more expensive products, eliminating their opportunities to access substitutes or arbitrage in the same or related markets (e.g. auto rentals, haircuts, etc.).

Furthermore, we should ask ourselves about the efficiency of gender-based price discrimination schemes. In other words, do such schemes significantly increase production or serve more consumers to justify price gaps and exacerbating gender inequality?<sup>3</sup> Or is this a way to get more benefits from some consumers who cannot properly evaluate a product due to misallocation of information or have behavioral biases towards a product?. Answering these questions is paramount to further protect consumers and promote equality. To this end, we need to develop appropriate gender assessment tools that provide us with data on markets and product characteristics, such as prices, functionality, and substitutability for similar and cheaper products on related markets.

For this reason, we propose to evaluate the role of gender equality as a guiding principle of competition in a social market that promotes consumer welfare. To this purpose, it is required:

- The development of a clear stance on the concept of consumer in the field of competition law and how gender equality fits in there.
- An understanding of how gender equality could increase consumer welfare by affecting prices, quality, and consumer choice.
- And how we could use gender assessment tools to provide and assess market data and product characteristics in discriminated markets.

•

We propose that competition law could provide the tools to develop gender-proof markets, increase consumer welfare, and take a step towards harmonizing consumer welfare across jurisdictions. We could consider gender also as a neutral guiding principle that could provide competition agencies with the appropriate framework to protect consumers from anti-competitive practices.

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<sup>3</sup> For example see Daniel J. Gifford & Robert T. Kudrle, “The Law and Economics of Price Discrimination in Modern Economies: Time for Reconciliation?” *UC Davis Law Review* 43 (2010): 1241-1242, for a discussion of the potential benefits of third-degree price discrimination.

OCTOBER 1<sup>ST</sup>, 2020

**Submission to the OECD's Call for proposals on Gender inclusive Competition Policy – developing evidence**

**TITLE: EXPLORING A GENDER-BASED MARKET FAILURE IN DATA-DRIVEN MARKETS: HOW DO BIASED ALGORITHMS IMPACT COMPETITION AND GENDER EQUALITY IN DATA-DRIVEN MARKETS?**

Authors<sup>1</sup>: María Catalina Gastelbondo Chiriví<sup>2</sup>, María Manuela Palacio Villarreal<sup>3</sup>, Felipe Augusto Díaz Suaza<sup>4</sup>

*Decir que lo personal es político significa decir que nuestras experiencias personales y nuestra vida privada no son vivencias aisladas sino parte de un sistema político. (Ruiz Navarro, 2019, p. 19)*

*Markets are as much political and cultural institutions as they are economic. The evaluation of markets and market failures must be expanded to include their effects on both the structure of power and the process of human development. (Bowless, 1991, p. 11)*

The following document is a proposal for applied research on the topic of gender and competition policy. It is aimed at exploring the impact that gender data gaps could have on data-driven markets. We expect that the results of the project will reveal phenomena present in the design and operation of e-commerce markets that could be causing gender disparities and even perpetuating biased decision-making processes and wrongful allocation of resources. Moreover, we hope that the project's insights will broaden the debate concerning the elements that support the existence of a strong relationship between gender related issues and competition goals and, also, the importance of informing different authorities and stakeholders of the role that competition policy plays in addressing and tackling gender inequality. Finally, we suggest exploring the suitability of some ex-ante measures and approaches that both regulators and competition authorities could adopt to shift their analytical frameworks towards a gender mainstreaming strategy to assess competition.

*“Something magically beautiful happens when a sequence of commands and decisions is able to marshal a collection of data into organized patterns or to discover hidden structures.” (Knuth, 2010)*

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<sup>1</sup> The authors declare that their views do not necessarily represent the views or the position of the institutions of which they are a part. However, their proposal is built on their experiences and expertise which has been admittedly enriched by their roles in both the public sector and in academia.

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Algorithms are at the heart of digital ecosystems. They influence many aspects of our lives as we now rely on connected technology for all kinds of things we used to do in person. (Watcher-Boettcher, 2017). Algorithms power many of the decision-making tools we are reliant on, by choice or not. For example, they are at the core of some of the self-learning systems behind search engines, social networks, marketplaces and App-stores, which means that they push the way in which information is both classified and organized (Biega, Gummadi, & Weikum, 2018). Algorithms are built on data that we often think is neutral or objective (Noble, 2018). However, algorithmic data-driven bias in a 'machine learning world' is a reality that has been at the center of the debate for a while now. The wide array of discussions in this regard highlight the fact that algorithms may be fed with negative biases that can affect an equitable distribution of information useful to drive digital systems and even societies (Chandler, 2005). Furthermore, an issue has been raised about algorithms being trained on highly biased male data sets (Criado, 2019), thereby affecting and skewing the opportunities and conditions of markets for men and women unequally.

We propose to consider the analysis of search engines as the starting point of this research. Internet search engines are the most influential gatekeepers of information and ideas (Bracha & Pasquale) and their broad reach has significant power to shape searcher behavior, perceptions and any other system or technology that is built on top of their results. Search engines with a dominant position are deemed to be "*like carriers, simultaneously stable conduits, dynamic cartographers, indexers (...)*" (Pasquale, 2008), which is why they are by nature resource allocation markets. Search engines do not display results neutrally and without a bias (Goldman, 2006), they may be loaded with gaps originated in their inputs and design and with stereotypical concepts of gender which can have the power to replicate and even amplify human bias forward. It should be noted that, even though bias in information may be beneficial under certain circumstances, we are concerned with the kind of bias defined as the "*outcomes which are systematically less favorable to individuals within a particular group and where there is no relevant difference between groups that justifies such harms.*" And in particular, we are concerned by bias in algorithms, which according to Lee, Resnick and Barton, can emanate from "*from unrepresentative or incomplete training data or the reliance on flawed information that reflects historical inequalities*". (Lee, Resnick, & Barton, 2019)

In this context, some research has shown that gender ideology is embedded in language (Leavy, 2018). Even more, that "*The extent to which male-unless-otherwise-indicated permeates our thinking may seem less surprising when you realise that it is also embedded in one of the most basic building blocks of society: language itself.*" (Criado, 2019) "*The presumption that what is male is universal is a direct consequence of the gender data gap.*" For instance, we explored whether there could be a data bias in search requests concerning gender-linked words like occupations. The words we chose are known to be loaded with historical and cultural gender stereotypes. We conducted the exercise both in Spanish and in English because we recognize that one is gender inflected and the other one isn't. We used male and female categories. In Spanish we looked up the comparison of the trends in search requests of words like: *Escritor/Escritora, Abogado/Abogada, Cirujano, Cirujana*, while in English we looked up for: *Congressman/Congresswoman, Chairman/Chairwoman, Businessman/Businesswoman*.

We found that the searches have a significant tendency towards the male gendered category of the profession. For example, around 80% of the results of the search for "*Abogado/Abogada*" and over 96% of the results of the search for "*Cirujano, Cirujana*" are male-linked. Similarly, the

categories “*Businessman/Businesswoman*” where male linked in a 92%. In contrast, close to an 81% of the searches for “*Enfermero/Enfermera*” are female linked. The results show, at least preliminarily, that the bias is adverse towards both female and male genders, we believe (and research has shown) this happens whenever there is a grounded gender stereotype for an occupation. Which in turn could create an unequal distribution of the information that can lead to failures in the allocation of resources. In this case, we are referring to the information that runs the search engines, that is furthered displayed and that nurtures other technology or systems.

To approach the abovementioned phenomena, we suggest measuring the extent of the randomness of the distribution of the data sets present in these search engines by applying Theil’s index. The idea is to capture the imbalances within and between groups. In sum, the research aims at exploring the methodologies already proposed and developed in other relevant academic research to measure equity or inequity in the distribution of information (Biega, Gummadi, & Weikum, 2018 and Bolukbasi, Chang, Saligrama, & Kalai, 2016). Subsequently, to come up with a mechanism for identifying biases so that managers, designers and developers of algorithm-based technology have useful tools to improve them.

These circumstances are ever present in data driven markets and could be understood as a market failure that must be assessed by competition authorities and regulators. Our research proposal is a call for authorities to apply a gender lens to the assessment of the basic cell of digital economies. We suggest exploring the suitability of ex ante mechanisms, like competition advocacy and market studies, to identify and further tackle market failures. Also, to include into compliance policies the findings of the research in order to prevent the failures.

In terms of Margrethe Vestager: “*The rule of law is there to preserve fair opportunities in our markets. When fairness is at risk, we need authorities to stand up for what is right. Authorities that can weigh the evidence and restore fair markets. That also drives competition enforcers today. When we do a competition case, we may think first of our rules, documents and economic data. But with our work, we stand up for very basic ideas. Fairness, openness, equal opportunities.*” (Long, 2019).

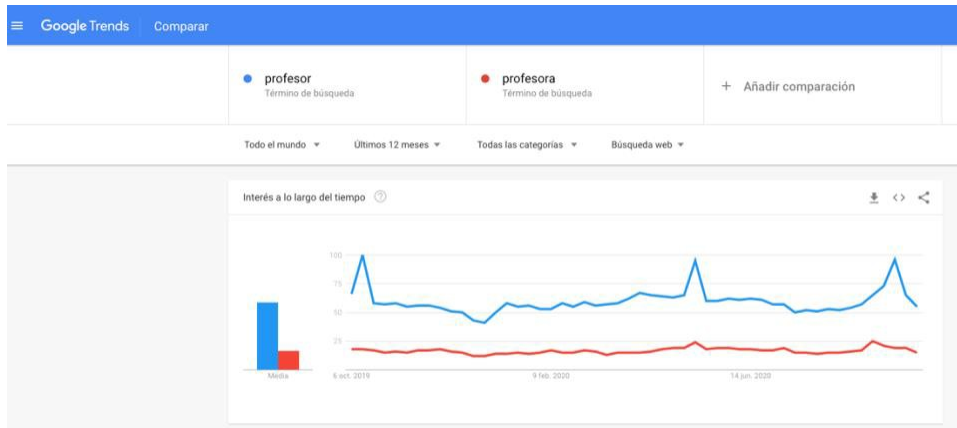
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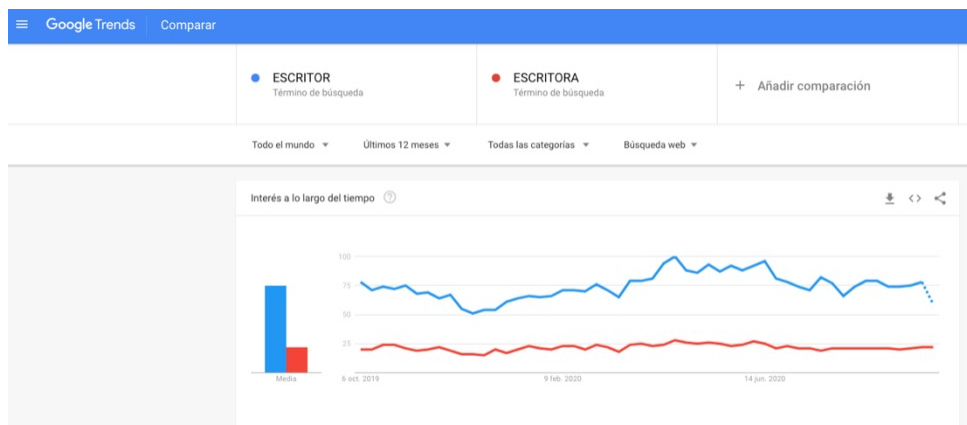
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# ANNEX

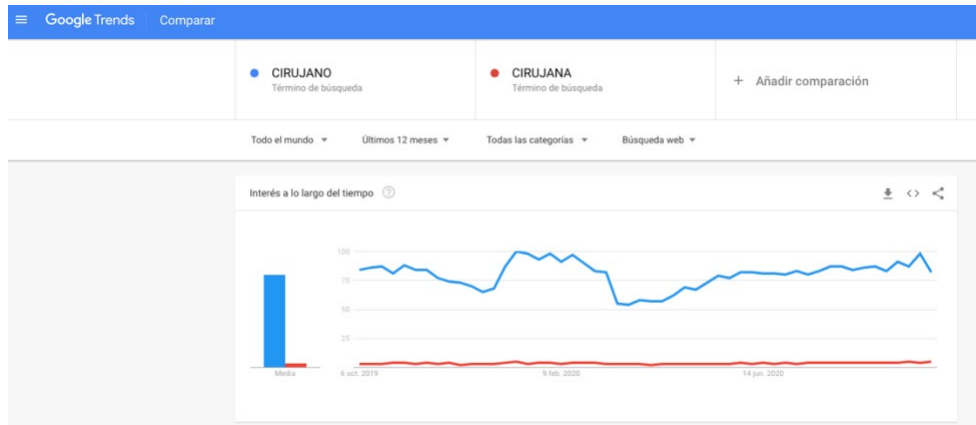
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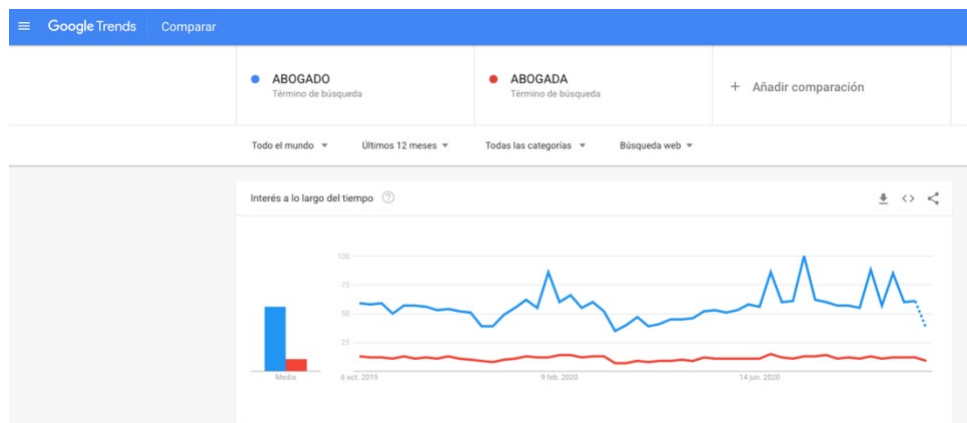
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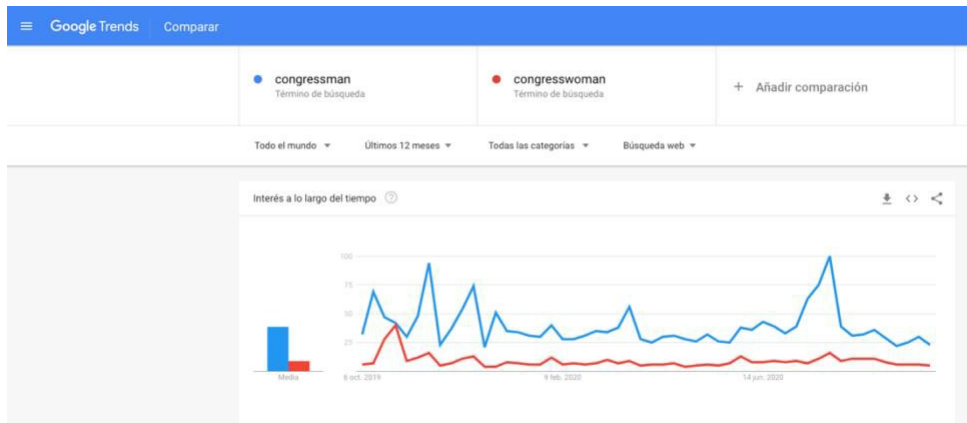
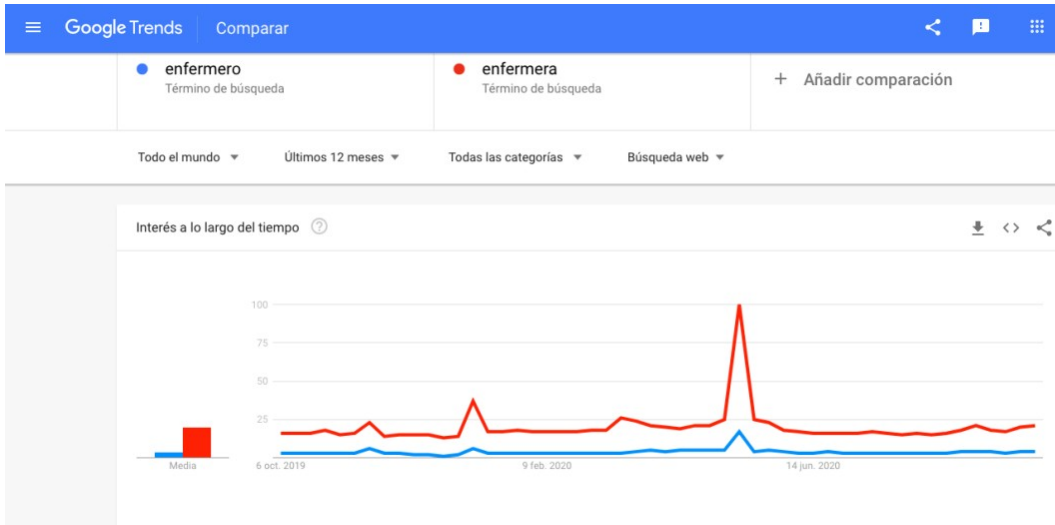
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## ABOGADO / ABOGADA

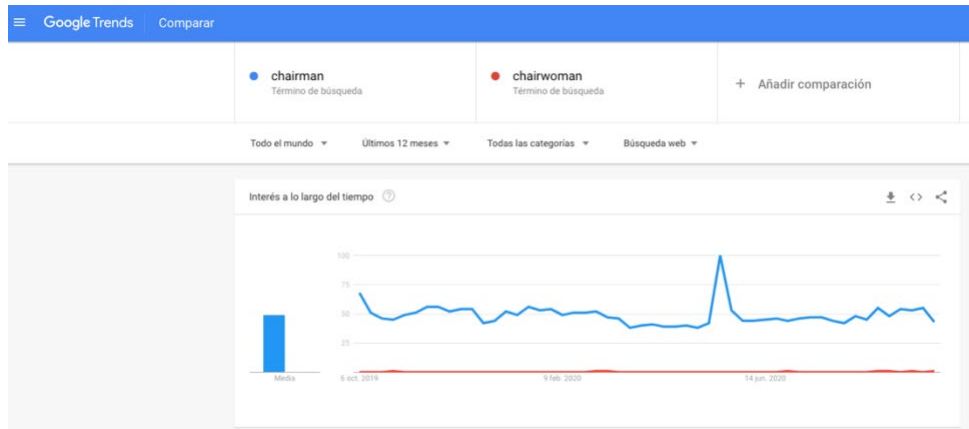


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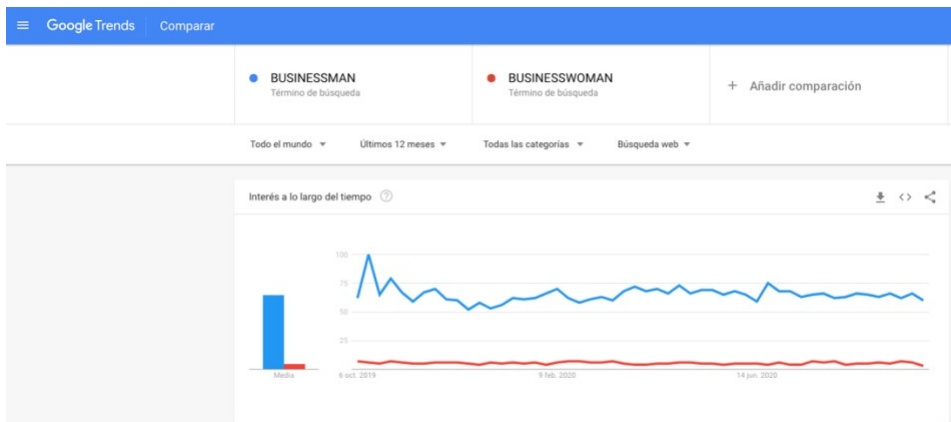


**CONGRESSMAN / CONGRESSWOMAN**

**Chairman / Chairwoman**



## BUSINESSMAN / BUSINESSWOMAN





*Show Her It's a Man's World[!]*

**Promoting Gender-Inclusive Competition Law and Policy**

*INCORPORATING EQUALITY / NON-DISCRIMINATION PRINCIPLE IN COMPETITION BUREAU'S WORK: PERSPECTIVE FROM CANADA*

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Research Proposal for OECD

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## I. Introduction

Show her it's a man's world. The foregoing line is from a 1950s advertisement by Van Heusen. No sign of exclamation at the end, as there was nothing surprising in making such statements at the time the advertisement was released! Advertisements by other major US corporations of the time had the same undertone, rather over tone in them: "Women don't leave the kitchen" (Hardees); "Christmas morning she will be happy with a Hoover" (Hoover – vacuum cleaners); to "cook – that's what wives are for!" (Kenwood). Kenwood had at least some sense of mischief to put an exclamation mark in its punch line. These are only a sample. Portraying women in a sexist, demeaning, and objectifying manner was *derigueur* in the advertisement industry at that time. In effect, it reflected the attitude of the whole society towards women, in a country, which takes prides in being the pioneer and major exporter of antitrust laws. Women at that time were confined to the four corners of their house. They were barred from most formal education and most professions. Margaret Ann Bulkley, the first woman to become a medical doctor in the UK, at the turn of eighteenth century, had to disguise as a man to get admission in Edinburgh University, which allowed women to enroll fifty years after Margaret got admission with deception.<sup>1</sup> Margaret had to disguise as Dr. James Barry to become a renowned military surgeon and to serve throughout the British Empire. Her real gender was revealed only after her death.<sup>2</sup> Margaret proved that she was not only equally competent, but excelled among her male colleagues. Women were allowed right to vote in the USA and Canada only in 1920s - a century ago.<sup>3</sup>

Women constitute 49.6% of the 7.8 billion world's present population.<sup>4</sup> Women thus comprise half of the labor/human resources, which is an integral factor of production.

The other three essential factors of production are land<sup>5</sup>, capital and entrepreneurship. Women as a factor of production was first confined to home/kitchen, and thus excluded from entering the market for works force. And where she entered the market she was exploited by paying less wages/salaries compared to equal work done by male colleagues.

*The fact that showering is marketed to moms as "self care" is just another example how even a woman's most basic needs are considered a luxury.*  
**MOTHER LIKE A BOSS**

Women as consumers have been/are still exploited by firms charging prices much higher than products of the same category and quality available in the market for men.

<sup>1</sup> <https://www.theguardian.com/books/2016/nov/10/dr-james-barry-a-woman-ahead-of-her-time-review>

<sup>2</sup> Id.

<sup>3</sup> See, XIX amendment to the Constitution of the USA; *An Act to confer the Electoral Franchise upon Women*, Statutes of Canada 1918, c. 20

<sup>4</sup> <https://www.worldometers.info/world-population/world-population-gender-age.php>

<sup>5</sup> In a digitalized economy, land may be read as space on the digital platform, or perhaps platform itself.

<sup>6</sup> <https://www.un.org/en/sections/un-charter/preamble/index.html>

## A. INTERNATIONAL EFFORTS TO COMBAT DISCRIMINATION AGAINST WOMEN

In 1940s/50s, whilst the corporations were openly demeaning women, the United Nations Charter signed on and came into force in 1945, became the first international instrument to refer specifically to the equal rights of men and women. The second paragraph of the preamble to the Charter reads:

[T]o reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the **equal rights of men and women** and of nations large and small;<sup>6</sup>

Article 13 mandated the General Assembly to initiate studies and make recommendations for the purposes, among others, for “the realization of human rights and **fundamental freedoms for all without distinction as to** race, **sex**, language, or religion.”

On 10 December 1948, the United Nations General Assembly in Paris adopted the Universal Declaration of Human Rights (UDHR).<sup>7</sup> Articles 2, 7, 16 and 23 are relevant from the perspective of giving women an equal status with men.<sup>8</sup> Articles 2 & 7 stipulated the principle of equality and non-discrimination on the basis of gender. Article 16 gave equal rights to women “as to marriage, during marriage and at its dissolution.” And Article 23 propounded the principle of “equal pay for equal work” for everyone without discrimination. On the heels of UDHR, the European nations passed the European Convention on Human Rights, in Rome on 4 November 1950, which in Article 14 reaffirmed the principle of non-discrimination on the basis of sex, among other grounds.

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<sup>7</sup> <https://www.un.org/en/universal-declaration-human-rights/>

<sup>8</sup> **Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 16**

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

**Article 23**

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

In 1951, the International Labour Organization (ILO) adopted its *Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*<sup>9</sup>, (CERMW) which imposed an obligation on ratifying states to apply the principle of “**equal remuneration for men and women workers for work of equal value**.”<sup>10</sup>

In 1979, the United Nations adopted the *Convention on the Elimination of All Forms of Discrimination Against Women*,<sup>11</sup> (CEDAW) which comprehensively dealt with the issue of various forms of discrimination against women. Article 1 of the CEDAW defines discrimination as:

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has ***the effect or purpose*** of impairing or nullifying the recognition, enjoyment or ***exercise by women***, irrespective of their marital status, on a basis of equality of men and women, of human rights and ***fundamental freedoms in the political, economic, social, cultural, civil or any other field***.<sup>12</sup>

Article 11(1)(d) reaffirmed the “right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.”

#### A. PRINCIPLE OF EQUALITY/NON-DISCRIMINATION IN NATIONAL CONSTITUTIONS

Nearly 200 countries around the world have written constitutions. Of these, 184 have adopted the principle of equality and non-discrimination. Of these, 139 countries expressly provide for gender equality or non-discrimination on the basis of sex.<sup>13</sup>

The Constitutional protection against discrimination on the basis of sex is guaranteed in the majority of countries and thus provides the basis for challenging any law or act of an administrative agency, in countries where the courts have power to judicial review, which discriminates against women (or men for that matter).

#### B. IMPACT OF INTERNATIONAL EFFORTS ON CANADIAN LEGISLATION

Pursuant to CERMW and CEDAW, many countries enacted laws to eliminate gender-based discrimination.<sup>14</sup> For example, in 1950s, Canada took an initiative to close the gap between men and women’s wages called “equal pay for equal work.” However, in 1984 pursuant to the Report of the *Commission on Equality in Employment* the standard was changed to “equal pay for work of equal value”

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<sup>9</sup>(No 100), Can. T.S. 1973 No. 37, (1951); Also available at [http://oit.org/wcmssp5/groups/public/---dgreports/---gender/documents/genericdocument/wcms\\_114185.pdf](http://oit.org/wcmssp5/groups/public/---dgreports/---gender/documents/genericdocument/wcms_114185.pdf)

<sup>10</sup> [http://oit.org/wcmssp5/groups/public/---dgreports/---gender/documents/genericdocument/wcms\\_114185.pdf](http://oit.org/wcmssp5/groups/public/---dgreports/---gender/documents/genericdocument/wcms_114185.pdf); Art. 1(b) the term “equal remuneration for men and women workers for work of equal value” refers to rates of remuneration established without discrimination based on sex. *Id.*

<sup>11</sup> 1249 U.N.T.S. 13; Available at

<sup>12</sup> <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>

<sup>13</sup> Catharine A. Mackinnon, Ch.19 Gender in Constitutions, in *The Oxford Handbook of Comparative Constitutional Law* [editors: Michel Rosenfeld, András Sajó] 2012.

In 1982, Canada adopted the *Canadian Charter of Freedoms and Rights* as part of its new Constitution Act of 1982. Section 15 stipulates the principle of equality before law without any discrimination on the basis of sex, among other grounds. Section 28 further reinforced the equality between men and women by stating that “the rights and freedoms referred to in [this Charter] are guaranteed equally to male and female persons.”<sup>15</sup> Section 52(1) of the Constitution Act provides that “the Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.” Constitutional guarantee through Section 52(1) for Charter Freedoms and Rights thus created a whole new area of Constitutional administrative law jurisprudence, whereby any legislation whether federal or provincial, or any act of an administrative agency (such as the Competition Bureau) which runs afoul of the Charter’s Freedoms and Rights, unless justified on a strict standard of section 1, are held *ultra vires*.<sup>16</sup>

The question thus arises: When an administrative agency which takes any action well within its parent statute but violates the Charter right of equality it is challengeable, could the same agency undertake a proactive action to promote the Charter right of equality though not directly mandated by the parent statute, would that be *intra* or *ultra vires*?

In late 2018, to promote Section 15(1) equality based on sex, and to fulfill its international obligations, Canada passed the Department for Women and Gender Equality Act,<sup>17</sup> with a full minister to oversee the functioning of the Department. The Act has implications for all federation agencies. This point will be elaborated more later.

#### A. RESEARCH QUESTIONS: THE TWO HOWS

1. How will the Competition Bureau get the legal mandate to incorporate and promote the principle of equality and non-discrimination in discharge of its functions under the Competition Act?
  - a. Could the provisions of the Competition Act be interpreted that would favour the promotion of equality?
  - b. Is there a positive obligation on administrative agencies to promote Charter’s Freedom and Rights?
  - c. Should the Government’s policy to promote gender equality be incorporated in federal agency’s work? If so, what is the legal basis to do so?
  - d. Is there a need for a specific mandate by amending the Competition Act?
2. Once the legal mandate is established in incorporating and promoting the principle of equality and non-discrimination, how would the Competition Bureau incorporate gender lens in its day today work?

<sup>14</sup> In 2002, the Norwegian Gender Equality Act was promulgated with the aim to promote equality and reduce gender based discrimination in Norway. The wide-ranging act covered comprehensive set of discriminations.

<sup>15</sup> Section 28, Constitution Act, 1982.

<sup>16</sup> In a 2018 case, the Supreme Court of Canada, in *Quebec (Attorney General) v. Alliance du personnel professionnel*, [2018] S.C.J. No. 17, had the opportunity to pronounce on a provincial legislation challenged as discriminatory on the basis of sex u/s 15 of the Charter.

## SOME IDEAS TO INCORPORATE GENDER-EQUALITY LENS IN DAY TO DAY WORK ARE:

- a. Defining Relevant Market. Market definition is a starting point for any competition analysis. Relevant market is defined from the perspective of a hypothetical consumer. However, relevant market can also be defined from the perspective of the supplier, by using the concept of “supply substitutability.”<sup>18</sup> This would allow the definition of relevant market to include comparison of comparable products for other gender, where products differentiated on the basis of gender, such as personal care; hygiene products; garments; shoes, watches, etc.
- b. Expanding the definition of “consumer welfare”?
- c. Advocacy  
We identified above two dimensions, through which women were excluded and exploited, that is, as a human resource, and as a consumer. Advocacy efforts can be targeted to eliminate exclusion and exploitation of women as a human resource. Where women are exploited as consumer, enforcement is the best tool.

- d. Marketing Practices

The picture on the side is advertisement of *Fair & Lovely*, skin whitening cream. The ad may not be deceptive, but it certainly is discriminatory against a sub-group of women, who are not fair. A competition agency should have the power, if it has the mandate to check deceptive marketing, to control such advertisements.



- e. Abuse of Dominance  
Price discrimination between products for women and men may be considered as an instance of abuse of dominance.

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<sup>17</sup> Department for Women and Gender Equality Act, S.C. 2018, c. 27, s. 661 Assented to 2018-12-13. available at <https://laws-lois.justice.gc.ca/eng/acts/W-11.3/page-1.html>

<sup>18</sup> See Robert Pitofsky, *New Definitions of Relevant Market and the Assault on Antitrust*, 90 Columbia L. Rev. 1805 at page 1860 (1990).

*Supply Substitution.* -- Although a product as presently manufactured may not be an adequate substitute for another, if the production process could be redesigned promptly and cheaply to produce the second product, then that potential “supply substitution” must be counted in the product market. See also *Brown Shoe Co. vs. U.S.* 370 U.S. 294; 82 S.Ct. 1502 (1962).

f. Cartelization

Hardcore cartels are generally condemned *per se*. That is, the “rule of reason” or competition analysis is not undertaken.

Coordinated or uncoordinated understanding among brands, specialized in women related merchandise, on the “brand markup” to keep products artificially high maybe investigated under cartelization provisions.

g. Mergers

Consider expanding the definition of merger-specific cognizable efficiencies to include gender lens. Further, gender balanced Boards may get brownie points to counterbalance minor anticompetitive effects.

**B. CONCLUSION**

It is hoped that this research will help find the missing piece that is required for the Competition Bureau to promote the gender-inclusive competition policy puzzle. Work on other jurisdictions, such as the E.U. may also be included in the research if the OECD so require. The research will serve as a template for other jurisdictions desiring to include gender-equality lens in their competition work.

## CALL FOR PROPOSALS

### Gender inclusive competition policy – Developing the evidence

**Proponent: Women in Antitrust Brazil (WIA) –**  
www.womeninantitrust.org

Contact info: Amanda Athayde – [profa.amanda.athayde@gmail.com](mailto:profa.amanda.athayde@gmail.com) /  
[wia.faleconosco@gmail.com](mailto:wia.faleconosco@gmail.com) – +55 61 98154-9364

#### ***Assessing gender issues in merger review and behavioural remedies***

Competition policy “usually thinks in terms of consumers and firms, government and regulators” and is “largely gender blind and prides itself on its objectivity.”<sup>1</sup> When it comes to horizontal mergers, competition authorities generally assess the impact of a concentration on competition based on the allegedly more objective economic tools (e.g. analysis of market share and concentration levels, non-coordinated and coordinated effects, countervailing buyer power, barriers to entry). Likewise, in verifying the efficiencies of a transaction, the competition authority assesses benefits to consumer and merger specificities. Traditionally, gender issues do not come into play when it comes to analysing the effects of mergers on competition.

Additionally, when a merger requires remedies because it raises competition concerns in that it could significantly impede effective competition, such remedies are preferably applied in the form of divestures and related structural commitments. Such commitments are expected to eliminate the competition concerns entirely.

Commitments relating to the future behaviour of the merged entity are also possible but in very specific circumstances. Such behavioural commitments may include commitments in the form of undertakings not to raise prices, to reduce product ranges or to remove brands, commitments to grant access to infrastructure or technology, etc. Gender issues are also not addressed in behavioural commitments.

Despite the absence of gender concerns in the analysis of the impact of a merger by antitrust agencies and in the design of possible behaviour commitments in the context of merger remedies, there are indicia that economic concentration has strong effects on gender equality.<sup>2</sup>

In this scenario, it is important to recall that, as explained by Eleanor Fox, the “notion of equality has run through antitrust (or competition) law since the beginning of (antitrust) time.” Antitrust law “focuses particularly on equality of opportunity: keeping open pathways for outsiders to contest markets on the merits.”<sup>3</sup> Market concentration, however, can close these pathways and cause great damage on equality of opportunity, which unsurprisingly has an adverse effect on gender equality.<sup>4</sup>

Under this scenario, competition law could “have big-picture concerns - about fairness, or inequality, or innovation, for example - while applying rigorous competition enforcement at the same time.”<sup>5</sup> At the very least, competition authorities should consider the ways monopolistic and oligopolistic market structures concentrate economic and

political power and amplify gender inequality. As explained by Ejaz Ghani *et al*, theory, dating back to Gary Becker, suggests that competitive reforms should reduce the extent of gender discrimination.<sup>6</sup>

Based on these considerations, the present research proposal aims to identify:

- How gender issues could indeed be incorporated in merger analysis (eg. Efficiencies?);
- And how those gender issues could be addressed in case of the design of behavioural remedies?

Ultimately, this research aims to propose a guideline for incorporating gender issues in the analyses of economic concentrations assessed by antitrust authorities, including a proposal of standard clause for the behaviour remedy. In addition, it has the purpose to assess the feasibility of proposing behaviour remedies in mergers that could address gender gaps in relevant markets.

As mentioned by Pike, “by investing in a gender inclusive competition policy, governments can make a real difference to gender inequality. Most importantly, such a policy could increase availability and affordability in key markets for women.”<sup>7</sup> Ultimately, creating a gender inclusive competition policy necessarily involves thinking how traditional antitrust tools such as merger review can more concretely address the challenges surrounding gender equality.

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<sup>1</sup> “2018 OECD Global Forum on Competition Explored The Relation Between Gender And Competition”. 29 Nov 2018. Available at: <https://www.oecd.org/daf/competition/gender-and-competition.htm>. Accessed on: 22 Sep 2020.

<sup>2</sup> Sally Hubbard. How monopolies make gender inequality worse. Forbes magazine, December 2017. Consider, for instance, a merger in a segment led by women-owned or operated SME.

<sup>3</sup> Eleanor M. Fox. Antitrust: Tracing Inequality – From The United States To South Africa. 14 Oct 2017. CPI. Available at: <https://dev.competitionpolicyinternational.com/antitrust-tracing-inequality-from-the-united-states-to-south-africa/>. Accessed on 22 Sep 2020.

<sup>4</sup> Sally Hubbard. How monopolies make gender inequality worse. Forbes magazine, December 2017.

<sup>5</sup> Johannes Laitenberger, the Director General of the European Union’s DG Comp’s discourse cited in Sally Hubbard. How monopolies make gender inequality worse. Forbes magazine, December 2017.

<sup>6</sup> Ejaz Ghani, Arti Grover Goswami, Sari Pekkala Kerr, William Kerr. Gender discrimination versus market competition in India: New evidence. 6 May 2017. Available at: <https://voxeu.org/article/gender-discrimination-versus-market-competition-india>. Accessed on: 22 Sept 2020.

<sup>7</sup> Shaping the “she-covery”: Using gender inclusive competition policy to build back better. Blog by Chris Pike, OECD on the Level, August 2020





## **Gender, Competition, and Leadership Development Programs: Theory and Practice**

**[RESEARCH DIRECTOR] KOKI ARAI, PROFESSOR, FACULTY OF  
BUSINESS STUDIES, KYORITSU WOMEN'S UNIVERSITY**

The development and sophistication of science and technology, including artificial intelligence (AI) and the Internet, has been remarkable. Various decisions made by humans are now being made by AI. Data related to every aspect of our daily lives are continuously collected, new information services are provided through the Internet, and opportunities offered by big data are harnessed. While these technological innovations bring convenience to life and efficiency to society, they also make a difference in the activities of “humans.” This is a response to an essential problem.

One of the elements of these “human” activities is the expansion of the base of women’s activities in the advancement of science and technology. The sophistication of science and technology requires a fundamental reexamination of the concept of humanity, including the development of robotics and virtual reality technology. At the same time, it is also essential that progress be made toward the goal of creating a vibrant society that is rich in diversity, in which human beings can fully exercise their individuality and abilities. To realize a society where the human rights of both men and women are respected and individuals can live with dignity, it is necessary to promote women’s activities. To achieve this, establishing a leadership development program for female students is important. The promotion of this program through its implementation is an essential requirement, and it is also the first specific goal of this study.

The second goal is to redefine the concepts of fairness, freedom, and competition in the context of development and sophistication of science and technology, as well as make policy recommendations as a guideline for the implementation of the leadership development program, to put the concepts into practice within set rules. In doing so, the question is, for example, how to prevent adverse effects on fairness, freedom, and competition arising from market dominance in the light of today’s prevailing digital platforms in society. In reviewing the relationship between human beings and science and technology from the perspective of fairness, freedom,

and competition, it is important to consider how market power was exercised and regulated in the past. For advancing this research, we will not only study the regulatory cases in Japan but also grasp the trends of regulation from the perspective of fairness, freedom, and competition in the development and sophistication of science and technology in major European countries, EU and the US. It is also necessary to incorporate these elements into discussions in Japan and conduct comparative research.

*What to expect from the competition authorities through this project*

**WE WOULD LIKE TO PROMOTE AND EDUCATE ABOUT THE KEY CONCEPTS OF FAIRNESS, FREEDOM, AND COMPETITION IN OUR FEMALE STUDENT LEADERSHIP DEVELOPMENT PROGRAMS. WE WOULD LIKE COMPETITION AUTHORITIES TO PROVIDE THEORETICAL AND PRACTICAL EXAMPLES OF HOW THESE CONCEPTS CAN BE SPECIFICALLY AND CLEARLY COMMUNICATED IN THEIR LEADERSHIP DEVELOPMENT PROGRAMS (LDP). ADDITIONALLY, WE WOULD LIKE THEM TO SUPPORT US IN OUR RESEARCH ON WAYS TO IMPLEMENT THESE CONCEPTS IN FEMALE STUDENT LEADERSHIP DEVELOPMENT. INDEED, A QUANTITATIVE UNDERSTANDING OF THE CURRENT SITUATION, SUCH AS CLARIFYING THE RELATIONSHIP BETWEEN THE ACTUAL STATE OF DIVERSITY, INCLUDING GENDER INDICATORS, AND BUSINESSES IN VIOLATION OF COMPETITION LAWS; THE RELATIONSHIP BETWEEN THE STATE OF DIVERSITY, INCLUDING GENDER INDICATORS, AND ENFORCEMENT PERFORMANCE OF COMPETITION AUTHORITIES IS AN IMPORTANT INITIATIVE. A COMPARATIVE STUDY AMONG OECD MEMBER COUNTRIES IS ALSO DESIRABLE. HOWEVER, BEYOND THESE EFFORTS, THE CLARIFICATION AND PROVISION OF CONCEPTS THAT ARE SUFFICIENT CONDITIONS FOR LEADERSHIP DEVELOPMENT ARE THE MOST DESIRABLE IN THE MEDIUM TO LONG TERM.**

[LDP Group]

**GROUP LEADER NATSU IWAKI, LECTURER, FACULTY OF BUSINESS, KYORITSU WOMEN'S UNIVERSITY (MANAGEMENT) [LDP GROUP IN CHARGE OF PRACTICE AND COORDINATION]**

Riuko Mori, Lecturer, Faculty of Business, Kyoritsu Women's University (Psychology) [LDP Group, Theory and Practice]

With the development and advancement of science and technology, there is an increasing need to expand human cognition and behavior as well as reexamine the nature of individual awareness and responsibility. In this context, we will explore, through both theory and practice, how to deepen our understanding of ourselves and how to build a leadership style that allows us to accept and utilize feedback from others for our own

growth, which is a necessary condition for the development of human characteristics in the course of scientific and technological progress. We will conduct research through the implementation of an LDP for female students from the perspective of gender equality, which is necessary to build a rich, diverse, and vibrant society where they can fully exercise their individuality and abilities. Building a society in which the human rights of men and women are respected and individuals can live with dignity in an advanced information society with advanced science and technology, acquiring leadership skills, is crucial. Such skills are also important for realizing a society where everyone can continue to work without having to choose between work and childcare or nursing care.

#### **[FAIRNESS, FREEDOM, AND COMPETITION CONCEPT GROUP]**

Group Leader Koki Arai, Professor, Faculty of Business Studies, Kyoritsu Women's University (Economics)

#### **NAOKI OKUBO, PROFESSOR, FACULTY OF LAW, GAKUSHUIN UNIVERSITY (LAW) [FAIRNESS, FREEDOM, AND COMPETITION GROUP, THEORETICAL ANALYSIS]**

Akihiko Nakagawa, Professor, Graduate School of Law, Hokkaido University  
(Law) [Fairness, Freedom, and Competition Group, Theoretical Analysis]

Along with the need for LDP for female students, there is a need to explore the sufficient conditions that should be included in their content. Today, advanced digital platforms based on science and technology are being built in the society and marketplace. These conditions must be taken into account when considering the aspects of women's advancement. Further, when considering support tailored to the actual situation of women, it is necessary to have a perspective that acknowledges diversity in an economic environment that is rapidly changing because of technological innovation, such as companies with strong market power. In this regard, it is important to incorporate the concepts of fairness, freedom, and competition, which are unwaveringly necessary concepts in AI society, into the LDP for female students. To this end, through the polishing of these concepts, we would like to position fairness, freedom, and competition as important elements in leadership education in general and in the realization of women's

leadership in particular.

*Plan for how to proceed with the project*

**THIS STUDY IS DIVIDED INTO THREE MAIN PHASES. IN PHASE 1, WE WILL IDENTIFY THE CHALLENGES OF LDP (FY2020). IN PHASE 2, THE ISSUES OF LDP WILL BE STRUCTURED AND DISCUSSED IN DETAIL TO DECONSTRUCT THE ISSUES OF LDP (LDP GROUP). WE ALSO INTEND TO ORGANIZE THE CONCEPTS OF FAIRNESS, FREEDOM, AND COMPETITION AND DISCUSS THE PUBLIC DISCIPLINE OF MARKET-DOMINANT COMPANIES IN THE DIGITAL SOCIETY (FAIRNESS, FREEDOM, AND COMPETITION GROUP). WE WILL CONDUCT ACADEMIC RESEARCH AND THEORETICAL ANALYSIS, PRACTICE, AND VERIFICATION (FY2021). IN PHASE 3, ALL GROUPS WILL PREPARE AND DISSEMINATE THE RESULTS OF THE ANALYSIS FOR PUBLICATION. IN ADDITION, WHERE POSSIBLE, WE WILL ORGANIZE, IN COLLABORATION WITH COMPETITION AUTHORITIES, AN EVENT TO SYNTHESIZE THE FINDINGS ON GENDER, COMPETITION, AND LEADERSHIP AND DISSEMINATE THE RESULTS (FY2022).**

Budget: Our budget is as much as the OECD will permit. We hope that it will be approximately 20 million yen. Contact: Koki Arai, e-mail: [koki.arai@nifty.ne.jp](mailto:koki.arai@nifty.ne.jp)

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**COMPETITION AND CONSUMER PROTECTION  
COMMISSION**

**COMPETITION LAW AND POLICY**

**A GENDER PERSPECTIVE**

**SEP 2020**

## Introduction

The 1990's reforms saw Zambia go through significant transformation from a command economy to a private sector driven economy and the current discourse is centred on a private sector led economy. The development of the private sector, however, is inextricably linked to debates about Zambia's informal Sector<sup>1</sup>.

Defining what constitutes an informal sector has not been without challenges. There are conceptual and practical challenges that come with estimating informality. The conceptual problem arises because of the absence of a single definition of informality. There are many terms used simply to refer to informal sector which include shadow economy, black economy, hidden sector, underground economy, parallel sector, second sector and subterranean sector<sup>2</sup>.

The informal sector, broadly defined, comprises of enterprises which do not comply with the full extent of Government laws and regulations<sup>3</sup> including the competition law and policy. Whatever the definition and challenges attended, the fact remains that the informal sector exists and provides both employment and contribution to the country's Gross Domestic Product (GDP). The International Labour Organisation (ILO) estimates that Zambia's informal economy contributes 24% of the nation's GDP. The World Bank estimates for 2009 were higher with the informal economy contributing 48.9% to GDP while the percentage of women workers employed in the informal economy was higher than the percentage of male workers at 91% for women and 76% for men<sup>4</sup>. For 2010, statistics for 2010 indicate informal sector contribution to GDP of 33% and accounting for 84% of the labour force.<sup>5</sup>

## Role of Gender in the informal sector

Zambia like any other Less Developed Countries (LDCs) has the majority of people that rely on the informal sector for their livelihoods as employment opportunities in the formal sector are scarce. According to the International Labour Organization, employment in the informal sector refers to employment where the employed persons are not entitled to paid leave, pension, gratuity and social security and work in an establishment employing less than five persons. Informal employees are casual or day labourers, domestic workers, unregistered or undeclared workers and some temporary workers or part-time workers. They work in formal or informal firms (small unregistered or unincorporated businesses), households or with no fixed employer and includes informal agriculture.

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<sup>1</sup> Manju Kedia Shah (June 2012), The Informal Sector in Zambia Can it Disappear? Should it Disappear?, International Growth Center Working Paper

<sup>2</sup> Sydney Chauwa Phiri et al (January 2012), Taxation of the informal sector in Zambia - Working paper No. 5; Zambia Institute for Policy Analysis & Research 2012

<sup>3</sup> Manju Kedia Shah (June 2012), The Informal Sector in Zambia Can it Disappear? Should it Disappear?, International Growth Center Working Paper

<sup>4</sup> Gadzala, Aleksandra. (2010). From formal- to informal-sector employment: Examining the Chinese presence in Zambia. *Review of African Political Economy*. 37. 41-59. 10.1080/03056241003637904.

<sup>5</sup> [https://www.mlss.gov.zm/?wpfb\\_dl=94](https://www.mlss.gov.zm/?wpfb_dl=94)

Recent studies have shown that the informal sector in Zambia employs a large share of the adult working population and has grown rapidly in recent years<sup>6</sup>. According to estimates, Zambia's informal sector employs close to 90% of its labour force<sup>7</sup>. Other estimates indicate that 88.7% of the employed Zambian population work informally and, 87.5% are informal workers employed in the informal sector while 1.2% are informal workers employed in the formal sector<sup>8</sup>.

Over the years, the number of women compared to that of men employed in the informal sector has been higher. For instance, results of the 2002/2003 LCMS showed that of the total informal sector employment, 90% were women and this trend has not changed much. Some of the major hindrances of women's participation in the formal sector have been attributed to socially and culturally ascribed gender roles, which range from being child-bearers and minders, homemakers to community organisers. Gender disparities in access to education and training have also contributed to limiting women's employment opportunities in the formal sector. The lack of sustained levels of positive growth has also been a barrier to many women moving out of poverty in Zambia. This has been worsened by the persistence of discrimination against women and the girl child, increased income inequality, insufficient investment in economic and social infrastructure to keep pace with requirements for rapid growth, and the HIV and AIDS pandemic. Income inequalities persist due to the over-dependence on poor performing and subsistence farming, lack of access to credit and diversified employment opportunities.

## **Competition Law and Policy**

The consequences of structural and behavioural changes of markets as a result of competition law enforcement has a far greater impact than mere consumer welfare. Competition law enforcement has a significant bearing on wealth distribution, the democracy of a State and the demographic and gender structure if its earnings. It also has a bearing on the state and participation of a country's informal sector, the distribution of wealth in that sector and gender roles.

The "formality" requirement of competition law enforcement unfortunately largely ignores and precludes the informal sector from being regulated despite the importance of this sector. While effects of monopolisation of markets can be corrected if done by a formalised company to other formalised companies, the same conduct is left to happen if the effects are on the informal sector. Participation of women is high in the informal sector and by extension the effects of monopoly and concentrated capital conduct on the informal sector disproportionately affects the women.

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<sup>6</sup> Manju Kedia Shah (June 2012), The Informal Sector in Zambia Can it Disappear? Should it Disappear? International Growth Center Working Paper

<sup>7</sup> Manju Kedia Shah (June 2012), The Informal Sector in Zambia Can it Disappear? Should it Disappear? International Growth Center Working Paper

<sup>8</sup> Informality and Poverty in Zambia: Findings from the 2015 Living Conditions and Monitoring Survey, October 2018, International Labor Office - Geneva: ILO, 2019

Mergers and the concentration of capital effectively means less and less alternatives for the informal sector access to the formal sector. This equally means concentrated capital allows capital holders to get more for less from the informal sector without consequences of predation or abuse of dominance. Conduct such as predatory business model, price discrimination, controlling methods or means of distribution, control of credit, and other unfair market practices while prohibited in the formal sector can still be extended during business engagements with the informal sector without consequences of competition law enforcement. Large volumes of horticulture products (vegetables and fruits) and forest-based economy (timber and charcoal) have relatively large female participation and constitute a significant portion of the domestic retail market of those products.

While business information sharing is prohibited in the formalised sector and is seen as a conspiracy against the public and often attracting high fines when discovered, the same does not apply to the informal sector. Sensitive information flows unabated in the informal sector and cartels are abound from product to product. Those that dare go against the agreed norm are not welcome neither are they protected the very laws that seek to discourage cartels and promote open markets.

### **Potential research questions**

In Zambia, statistics on the contribution of the informal sector to GDP are inconsistent.<sup>9</sup> This is so because the extent and scope of the informal sector is unknown. The female participation remains a key pillar of the informal sector and therefore the extent to which competition law and policy promote fair competition and supports the growth of the informal sector require interrogation. The fact remains that the informal sector is an integral part of the broad economy and competition law and policy is not only concerned with the formalised economy but the whole economy including the informal sector. The disproportional effect to woman of the lack of reach of competition law and policy to the informal sector and how the competition framework can be remodelled for inclusive growth remains an area that need further discussion.

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<sup>9</sup> [https://www.mlss.gov.zm/?wpfb\\_dl=94](https://www.mlss.gov.zm/?wpfb_dl=94)



## MEMORANDUM

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Gender Inclusive Competition Policy: Proposal Submission

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### INTRODUCTION

We are pleased to submit the following memo in response to the OECD's Call for Proposals: Gender Inclusive Competition Policy – Developing the Evidence. The proposals detailed below provide context and list data requirements to facilitate these lines of research.

### PROPOSAL 1: HOW DOES DYNAMIC COMPETITION AFFECT EQUALITY OF OPPORTUNITIES ACROSS GENDERS?

This project would assess how competition influences equality of opportunities across genders, as opposed to equality of outcomes. A common criticism of the existing literature on gender inequality is that many of the different outcomes observed are the result of different choices or characteristics of men and women.<sup>37</sup> This project could try to overcome this criticism by using measures of equality of opportunities and assessing how these measures are affected by dynamic competition.<sup>38</sup>

This project requires first, a measure of dynamic competition and second, a measure of equality of opportunities.

Examples of measures of dynamic competition could include:

- Ideally, a measure of entry barriers (*i.e.* costs that discriminate against entrants);
- Assuming that the first measure is hard to obtain, entry and exit rates are one of the most reliable indicators used by competition authorities to indirectly assess barriers to entry;
- Measures of the dynamism of market shares, such as the coefficient of correlation between market shares in successive periods, and
- Finally, innovation rates.

Concerning equality of opportunities, measures could include:

- The residual wage gap (as opposed to the total wage gap), which accounts for different career choices, hours worked, education, experience, etc. This measure represents a lower bound of inequality of opportunities, as differences between career choices, education and experience could be explained by upstream discrimination.
- To complement the first measure, measures of access to career, education and positions of high responsibility would help to better understand what part of the explained wage gap is the result of different choices or gender (implicit) discrimination.

<sup>37</sup> For example, see: Blau, Francine D., and Lawrence M. Kahn, "Gender differences in pay," *Journal of Economic Perspectives* 14.4 (2000): 75-99.

<sup>38</sup> For an example of measures of equality of opportunities, see: Roemer and Trannoy, "Equality of Opportunities: Theory and Measurement", *Journal of Economic Literature* Vol. 54, No. 4 (2016), 1288-1332. <https://www.jstor.org/stable/pdf/26303161.pdf?seq=1>.

## **PROPOSAL 2: IS DISCRIMINATORY PARENTAL LEAVE AN ENTRY BARRIER FOR WOMEN?**

The second proposal is to evaluate whether differences between maternity and paternity leave can create an entry barrier for women, making it harder for them to compete in labour markets. In most developed countries, barriers to entry for women tend to be more informal in nature, in the sense that the law does not directly discriminate against them – unlike some developing jurisdictions where that does still occur.

However, there seems to be one important exception to this rule: the laws of most developed countries continue to give men and women different rights in terms of parental leave. While these laws appear to favour women by giving them extra paid leave and the right to keep their jobs, these laws might have the unintended consequence of increasing the cost/risk of hiring women, in effect, creating an entry barrier for women.

This research would assess whether jurisdictions with a greater differential between maternity and paternity leave tend to have higher (residual) wage gaps and lower female participation in labour markets. In addition, this research would also assess the effects of alternative policies to address this issue, namely by comparing: (1) policies that allow the two parents to share a fixed amount of parental leave among the two; and (2) policies that provide each parent with an equal amount of leave that cannot be transferred or shared.