

Five minutes with... Dr Anca Cojoc

The former CMA economist, competition litigation, investigations and mergers expert discusses her new role at Cornerstone Research, along with some of the trends and challenges to keep an eye on over the coming months

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Congratulations on your new role at Cornerstone, how are you settling in so far?

Thank you. It has been an exciting start so far. There is a lot of positive energy at Cornerstone Research, and everyone is very encouraging and looking to make sure that I am settling in without any issues. There is much focus on collaboration, and I have felt welcomed in the company both by my European and US colleagues. We also had a lovely annual party in January, which made settling in even easier.

We saw various trends developing during 2022, including what some see as a more aggressive approach by the UK Competition and Markets Authority (CMA) when it comes to mergers, notably with its statement on Meta/Giphy towards the end of the year. How do you think this will develop over the course of this year?

In my view, post Brexit, there has been increased pressure on the CMA to continue strengthening its reputation as a global competition authority. Over the past couple of years, there have been quite a few cases that have put the CMA in the spotlight. The CMA has rigorous enforcement of merger control and competition policy, and in the coming years, it is very likely that it will become even tougher. We know that there are already proposed changes with respect to the CMA's enforcement in digital markets via the proposed Digital Markets Unit (DMU) bill that is supposed to come into play in the near future, as well as proposed changes to jurisdictional UK threshold tests aimed to reduce the risk of "killer acquisitions".

With respect to the DMU, I think we will see a lot of uncertainty about what the bill will bring in terms of new powers that the CMA will have when tackling alleged anti-competitive behaviour by the tech companies caught by this legislation. The DMU is targeted at firms that have strategic market status, and with respect to merger control, it will lower the intervention threshold of the CMA and would need to show a realistic prospect of a significant loss of competition (SLC) instead of showing that SLC is more likely than not. Thus, it is reasonable that we will see a lot more merger interventions and Phase II investigations by the CMA in digital markets.

With respect to killer acquisitions, the CMA proposes to introduce a new threshold that would enable it to capture transactions where there is no overlap in activities between the acquirer and the target, and thus, there will be an increase in merger control for many

well-established businesses. The challenge, though, is that it will still be quite difficult for the CMA to distinguish between a pro-competitive acquisition and a killer acquisition or reverse killer acquisition, but perhaps the increased threshold will capture more such acquisitions than the current status quo.

Economic analysis and modelling play a vital role in merger investigations – how else can they assist in competition law enforcement more widely?

Economic analysis and modelling have played an important role in shaping competition law enforcement way beyond the assessment of mergers. This is particularly true in jurisdictions where enforcement is evidence-based. In this framework, assessments are based on rigorous analyses of market facts and counterfactuals (ie how the market would look in the absence of an alleged behaviour such as a merger or price conspiracy, etc). Economics not only provides the theoretical framework but also the methodology that allows us to fully capture the overall effects, such as the welfare implications of alleged conduct observed in the market. Thus, economic analyses allow competition authorities to balance the negative effects against the efficiencies arising from such conduct, such as those arising from collaboration on investment. Economic modelling of facts has become increasingly more complex and, given the large data that is now available in some cases – for example, in the digital sector where large platforms have access to a vast amount of data – it will greatly influence the assessment of potential theories of harm and efficiencies proposed by competition policy.

Also, while legal frameworks and enforcement of competition law vary across jurisdictions, the economic frameworks are the same. Thus, to the extent that businesses look for convergence and predictability, they would benefit from a more central role for economic evidence. Of course, the salient data inputs into an economic analysis may vary from country to country, but at least the economic assessment framework will be the same.

What do you think will be your key areas of focus over the coming months?

I will continue to focus on providing economic support for clients engaged in competition litigation matters and will continue to focus on telecoms and digital markets. Having done several cases in this space, I find that there are still a lot of interesting questions that telecom operators are grappling with. As for digital, there are a lot of interesting developments happening in the market, and I am looking forward to continuing to advance my expertise in this area. I look forward to working with my Cornerstone Research colleagues on interesting and important casework.

We're also seeing increasing regulatory scrutiny of the use of algorithms and AI – how do you see this developing?

We live in a digital world that is evolving rapidly. Competition authorities around the globe are looking at issues such as algorithms and AI and studying the real-world impacts of these, especially since the impact and evolution should not be assessed in a vacuum and instead be balanced against any positive effects such as increased efficiencies.

What other trends so you think practitioners should be keeping an eye on as the year progresses?

Sustainability appears to be another key area of focus for both the CMA as well as other European regulators and competition authorities. As more firms are getting more involved in adopting sustainability measures, I believe there will be an increased focus on competition policy to ensure that such measures comply with competition law.

And finally, what are you looking forward to the most in the coming months at Cornerstone Research?

I look forward to leveraging my experience in leading teams to direct the delivery of the growing portfolio of cases the team already has. The Cornerstone Research team is quite impressive, and I am looking forward to working together collaboratively.

Dr Anca Cojoc is a principal at Cornerstone Research in London (<https://www.cornerstone.com/>).

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