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COMPETITION LAW, DATA, AND SUSTAINABILITY: A CHALLENGING CROSSROADS FOR LATIN AMERICA AND CHILE

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Competition Law, Data, and Sustainability: A challenging crossroads for Latin America and Chile[1-2]

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Abstract: This article explores the intersection between competition law, sustainability, and data using a "threefold approach". This approach acknowledges that a comprehensive analysis of competition and sustainability must incorporate the impact of data-driven technologies, and that the relationship between data and sustainability initiatives must consider the boundaries set by competition law. The analysis focuses on the context of Latin America, especially Chile. While it recognizes the importance of monitoring developments in the EU and USA, given the current institutional framework in the region, maintaining a single-mission competition policy is advisable. However, traditional concepts of competition law, such as consumer welfare, quality, and efficiency, can effectively address sustainability concerns and effects, especially when supported by data analysis techniques.

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1 The main ideas of this paper stem from discussions held during the following academic events: the workshop "Data Sharing & Climate Action in Brasil" (video available at **https://www.youtube.com/watch?v=klQft_Ol7yg**), where Felipe Irarrázabal presented, organized by the Max Planck Institute for Innovation and Competition in December 2022 (University of São Paulo), and the seminar "**#COMIPin-DigiMarkts2023: Sustainable & Digital Competition on the Merits: A Comparative and Interdisciplinary Perspective**", where Juan Pablo Iglesias presented, organized by Maastricht University in June 2023.

2 All the Spanish to Englishtranslations included in this document are made by the author.

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1. THE TWOFOLD APPROACHES: 'DATA & SUSTAINABILITY', 'COMPETITION LAW & DATA', AND 'COMPETITION LAW & SUSTAINABILITY'

Perhaps the two most significant trends of the 21st century are: **(i)** the rapid development of digitalization, including aspects like "*softwarization*", the Internet of Things (IoT), and artificial intelligence; and **(ii)** the increasing urgency of climate action. Both trends are interconnected with the process of globalization that began in the latter half of the 20th century[3].

While competition law and policy have traditionally addressed these areas separately, it is worth considering a threefold approach: '*Competition, Data, and Sustainability*.' This approach recognizes that an analysis of competition and sustainability cannot be complete without considering the nature and impact of data-based technologies. Similarly, the connection between data and sustainability initiatives should also take into account the boundaries imposed by competition law.

This article explores what should be the angle of this 'threefold approach', especially considering the state of economic and technological development of the countries in Latin America, as well as the role of competition law (particularly in Chile). Yet, before explaining said threefold approach, it is necessary to address the twofold intersections: **(a)** data and sustainability; **(b)** competition law and data; and **(c)** competition law and sustainability.

a. Data and sustainability

The connection between data and sustainability is mainly given by the design of technological solutions aimed at achieving environmental goals.

For instance, in the context of Latin America, data-based technologies can be particularly useful to implement what is called "precision-based agriculture". This is the optimization of farm practices through data-driven decision-making to improve both production and sustainability[4]. Thus, with the data provided by soil sensors, satellite imagery, and weather stations, the use of water and pesticides can be improved in order to reduce environmental impacts (for example, by designing a smart-irrigation system or a smart-pest control)[5].

The same can be said for waste management, recycling and resource efficiency in general. Blockchain-based solutions can enable a transparent, tamper-resistant, and auditable system for tracking the whole product's life cycle, by collecting data from the different agents involved in the said cycle (producer, distributor, retail, and consumer)[6]. This technology could be useful to monitor an extended producer responsibility regulation.

However, on the other hand, it is also important to bear in mind that processing produces its own carbon footprint through the use of large servers and hardware infrastructure (which are necessary to enable data

3 The process of globalization put forward other challenges, as economic international inequality, public health and national security. For this latter topic, see: Irarrázabal, Felipe (2022). *What should a competition agency do in a country that has a mandatory merger control but lacks FDI screening?: The case of Chile and Latin America*, Investigaciones CeCo, available at: https://centrocompetencia.com/wp-content/uploads/2022/11/Felipe-Irarra%CC%81zabal-What-should-a-competition-agency-do-in-a-country-that-has-a-mandatory-merger-control-but-lacks-FDI-screening.-The-case-of-Chile-1.pdf

4 Saliu, Fluturium and Deari, Hasim (2023), *Precision Agriculture: A Transformative Approach in Improving Crop Production*, International Journal of Research and Advances in Agricultural Science, available at: https://www.ijraas.com/ojs/index.php/ijraas/article/view/33/25.

5 For a review of digital solutions applied to production in agriculture (e.g., smart irrigation systems, smart pest control), see OECD et al. (2020), *Latin American Economic Outlook 2020: Digital Transformation for Building Back Better*, OECD Publishing, Paris, p. 89, available at https://www.oecd-ilibrary.org/docserver/e6e864fb-en.pdf?expires=1687059213&id=id&accname=guest&checksum=34180297F-53CB09471DB2E5AF9EB949F

6 See Tapscott, Don, and Tapscott, Alex (2019), *Blockchain Revolution*, Penguin Random House, UK, p. 157 ("Traditional utilities in both the developed and developing world can use the blockchain-enabled IoT for tracking production, distribution, consumption, and collection").

processing). This put forward the issue of whether the current digital business models (as open software or peer-to-peer frameworks) are the more "greener" ones[7].

b. Competition law and data

The connection between competition law and data - especially in the context of digital markets - has been addressed by both scholars and jurisdictions (notably the EU, Germany, and the UK). Given the increasing importance of data for companies and consumers -the "new oil"-, new theories of harm (both exclusionary and exploitative) have been developed.

The acknowledgment of the impact of "data advantages" for the competition process, and its role as entry barriers (or even as an essential facility within dominant or "unavoidable" platforms), has somehow inspired the enactment of legal reforms (e.g., the Digital Markets Act in the EU, the GBW-10 in Germany and the DMCCA in the UK[8]), novel court's decision (e.g., Google/Fitbit in the EU or Amazon in the US), and competition agencies' advocacy tools (e.g., the joint declaration of the CMA and the ICO, in the UK). Furthermore, the impact of "data policies" within zero-price models on consumer welfare has also been addressed, especially considering the enactment of strong data protection statutes (e.g., the Facebook decision in Germany).

c. Competition law and sustainability

At some level, competition and sustainability are in conflict. Spillover effects, first-mover disadvantages, and economies of scale reduce companies' incentives to undertake the necessary investments to innovate and adequate their productive frameworks to greener standards. In other words, it is difficult for a company to reduce its gas emissions through the use of an expensive technology if its competitors keep selling cheaply thanks to the use of a polluting technology. According to this argument, unilateral initiatives would worsen the firm's competitive position and profitability[9].

In this scenario, collaboration between companies (even competitors) can help to implement (or at least to speed up) the adoption of greener technologies. As the EU Commissioner M. Vestager has declared: "businesses have a vital role in helping to create markets that are sustainable (...) and competition policy should support them in doing that"[10]. This idea has been called "green antitrust movement" and has been criticized for allowing the creation of artificial market power and inducing to collusion[11].

In this regard, one of the main challenges behind the intersection between competition law and sustainability is to prevent greenwashing (i.e., agreements between competitors without genuine sustainability objectives) while increasing the opportunities for business collaborations that are aimed to improve their environmental standards. In this task, some competition agencies have intended to provide more transparency and legal certainty for undertakings that are willing to engage in green collaboration. A few examples can be found in

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7 See Lanier, Jaron (2010), *You are not a gadget, a Manifiesto,* Penguin Random House, NY, pp. 197-198 ("The internet is a huge physical device distributed around the planet. It has a significant carbon footprint. The vast, excessive, unneeded copying of data promoted by the "open" approach is responsible for the majority of that footprint").

8 For a comparative chart of ex ante digital regulations laws (EU, Germany, UK), see here.

9 For a counter-argument, see Schinkel, Maarten and Treuren, Leonard (2020), *Green Antitrust: (More) Friendly Fire in the Fight Against Climate Change*, Amsterdam Law School Legal Studies Research Paper No. 2020-72, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3749147, p. 12 ("As the empirical literature shows, however, firms can differentiate their products as more sustainable, and consumers do, in general and increasingly, have a willingness to pay for them that is great enough to make unilateral sustainability investments profitable. The first-mover disadvantage therefore seems a rather special case").

10 See: https://wayback.archive-it.org/12090/20191129200524/https:/ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/competition-and-sustainability_en

11 See Schinkel, Maarten and Treuren, Leonard (2020), p. 1 ("Incentives to produce more sustainably are stronger when firms compete than when they are allowed to make sustainability agreements (...) It is not good policy to relax the general competition rules in order to accommodate the rare genuine sustainability agreement. However well-intended, green antitrust risks damaging both competition and the environment").

the (draft) Guidelines on "Sustainability Agreements" of the (Dutch) AMC[12], the Guidance on "Environmental sustainability agreements and competition law" of the CMA[13], and the chapter on "Standardization Agreements" of the EU Horizontal Guidelines[14]. However, there is still not enough evidence to determine whether these soft law instruments have been effective and whether they have indeed enabled innovative collaborations[15].

2. THE THREEFOLD APPROACH '*COMPETITION LAW, DATA AND SUSTAINABILITY*', AND ITS CHALLENGES

The threefold approach between competition, data, and sustainability has not been sufficiently explored yet. But, why would a 'threefold approach' in these matters be useful? Considering the increase of digitalization (including *softwarization*, AI, and the IoT), it would not be sufficient to analyze the interaction between competition and sustainability without assessing the impact of data-based technologies. At the same time, it would not be sufficient to analyze the interaction between data and sustainability without considering the boundaries set by competition law. Lastly, it can also be said that, when analyzing the interaction between data and competition law, the harm produced to the environment by computer power infrastructure should be also evaluated (e.g., water and energy consumption by data centers).

In other words, the threefold approach is based on the urgency of climate action, as well as on the rapid development of data-based technologies. A digital economy is based on a network of software, smart devices, sensors, and cloud computing. These components are constantly generating huge amounts of data (*Big Data*) about many factors, such as consumer preferences and behavioral patterns, business actions across the supply chain, geo-localization of physical assets, etc.[16] Therefore, with the help of data analysis techniques, this information can be used by businesses to optimize decision-making and pursue environmental goals. For instance, "network optimization can reduce the number of trucks on the road, lowering emissions and waste", while "digital platforms can support shared warehouse space and transport capabilities, increasing utilization rates and reducing emissions"[17].

A real-case example of the connection between data, sustainability, and competition is the Catena-X initiative in the automotive industry. This is a data network based on a cooperation agreement between different economic agents -including competitors- of the automotive industry (e.g., manufacturers, suppliers, dealers)

12 See CentroCompetencia Universidad Adolfo Ibáñez ("CeCo") summary note.

13 See CeCo's summary note.

14 However, it is worth to mention that the former Horizontal Guidelines of the European Commission (2001), included a section of Environmental Agreements. That section stated that: "Environmental agreements caught by Article 81(1) [Article 101(1)] may attain economic benefits which, either at individual or aggregate consumer level, outweigh their negative effects on competition. To fulfil this condition, there must be net benefits in terms of reduced environmental pressure resulting from the agreement, as compared to a baseline where no action is taken. In other words, the expected economic benefits must outweigh the costs (...) Such costs include the effects of lessened competition along with compliance costs for economic operators and/or effects on third parties. The benefits might be assessed in two stages. Where consumers individually have a positive rate of return from the agreement under reasonable payback periods, there is no need for the aggregate environmental benefits to be objectively established. Otherwise, a cost-benefit analysis may be necessary to assess whether net benefits for consumers in general are likely under reasonable assumptions" (para. 179). This section was not included in the Horizontal Guidelines of 2010, however the Commission affirmed that this adjustment did not imply a change on its policy in this matter. European Commission (2010), *Competition: Commission Adopts Revised Competition Rules on Horizontal Cooperation Agreements – Frequently Asked Questions*, available at https://europa.eu/rapid/press-release_MEMO-10-676_en.htm?locale=en.

15 For a review of the performance of the UK framework, see Lema and Abarca (2025), *From abstract environmental criteria to concrete assessments: the (seemingly) limited application of the CMA's Guidance*, available at https://centrocompetencia.com/de-criterios-ambientales-abstractos-a-evaluaciones-concretas-la-aparentemente-exigua-aplicacion-de-orientacion-de-cma/.

16 See Ezrachi, Ariel, and Stucke, Maurice (2016), Virtual Competition, The Promise and Perils of the Algorithm-Driven Economy, Harvard University Press, London, p. 20 ("With the Internet of Things, sensors, microphones, and cameras will swep in significantly more data on human behavior in their homes, cars, and work (...) Through data fusion, companies can identify and improve their profiles of individuals; better track individuals' activities, preferences, and vulnerabilities; and better target individuals with be behavioral advertisements").

17 OECD et al. (2020), *Latin American Economic Outlook 2020: Digital Transformation for Building Back Better*, p. 103, available at https://doi.org/10.1787/e6e864fb-en. See also World Economic Forum (2016), *The Global Information Technology Report 2016, Innovating in the Digital Economy*, available at https://www3.weforum.org/docs/GITR2016/WEF_GITR_Full_Report.pdf.

aimed to exchange data and promote technical innovation, including environmental targets. Moreover, this data network would make it possible to trace and determine the carbon footprint of components along the value chain. As it will be explained below (in Section 4-a), this initiative was approved by the Bundeskartellamnt and, as will be explained below, by the Fiscalía Nacional Económica (FNE), in Chile[18].

Therefore, it is undeniable that data-based technologies have great potential to address the challenges of climate action. So, what is the problem?

The problem is that *Big Data* data can be used by businesses not only to achieve pro-competitive or environmental goals but also to increase their market power through engaging in exclusionary practices or coordinated practices (in a way that harm consumer welfare). Hence depending on how the "environmental data" is collected and distributed among the companies in a particular market, barriers to entry grounded in data-advantages may arise. Moreover, said data may be used to exclude competitors[19], create unfair competitive data-advantages, or for reaching collusive outcomes.

Certainly, the sole existence of an anticompetitive risk is not sufficient to reject a pro-environment data-based initiative. When facing a competition law case, at least under the rule of reason, a balancing exercise should be made. This faces us with the age-old question: What are the elements that should be balanced against each other? Does one need only balance pro-competitive against the anticompetitive effects? Or should one also take non-competitive objectives, such as the protection of the environment into consideration?

Moreover, as it will be explained below, data may also be used by both competition authorities and regulatory agencies to properly assess - in quantitative terms - the effects of certain business models or collaboration agreements on sensitive competitive parameters that can be related to environmental harm or benefits, as quality, and innovation. It can also be used to determine what has been called "environmental prices" or "shadow prices" (e.g., values that indicate the harm or social costs of pollutive emissions).

All things considered, in the task of facing this *avant-garde* challenge, it is equally important to bear in mind both the opportunities and the risks presented by this intersection, which means achieving a smart - rather than an activist - application of competition law (especially in still-maturing competition law systems, as the ones of Latin America). This issue will be addressed below.

3. THE CURRENT SITUATION IN LATIN AMERICA

Latin America is not the same as Europe or the USA. The degree of maturity of the digital markets, as well as the state of development of competition law, are significantly different. Therefore, it is reasonable to suggest that the threefold approach between competition, data, and sustainability should assume a specific Latin American perspective.

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18 A similar example would be the environmental sustainability agreements defined by the CMA as "unlikely to infringe" the cartel prohibition, as "an agreement to pool objective, evidence-based information about, or provide a rating on, the environmental sustainability credentials of suppliers". See CMA (2023), Green Agreements Guidance, available at https://assets.publishing.service.gov.uk/media/6526b81b244f8e000d8e742c/Green_agreements_guidance_.pdf

19 For an explanation of how Big Data and algorithm targeting can improve the performance of anticompetitive predatory prices, rebates, tying and bundling, see Cheng, Thomas, and Nowag, Julian (2023), *Algorithmic Predation and Exclusion*, U. of Pennsylvania Journal of Business Law, Vol. 25:1, available at: https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1677&context=jbl

a. The digitalization process in Latin America

Latin America faces significant challenges regarding both sustainability and the digital economy. Moreover, as the countries in the region are still developing economies, they also face important challenges in productivity and innovation[20].

According to the OECD's report 'Latin America Economic Outlook 2020', this region "has a poorly diversified productive structure, resulting in low value-added", while countries' export specializations "are concentrated in goods with low technological content"[21]. Moreover, the telecommunication infrastructure is still developing in the region (the connectivity gap remains one of its big deficits).

However, during the last decade, several countries in the region have experienced a significant process of digitalization of their commerce (i.e., e-commerce), labor (e.g., telecommuting), and production, which has been further accelerated by the Covid-19 pandemic[22]. This growing approach of the region to the digital economy is demonstrated by both mergers (e.g., *Uber-Cornershop* in Chile, *Walmart-Cornershop* in México) and anticompetitive conduct cases (e.g., *Whatsapp* in Argentina, and *Mercado Libre*[23] in Chile)[24].

b. The role of competition law regarding 'sustainability & data' challenges in Latin America

In general, competition law regimes of Latin American countries pursue the traditional objectives of competition law: consumer welfare, economic efficiency, and freedom of choice[25]. Other policy goals, such as employment, national security, or the protection of the environment, are not included in competition statutes. Therefore, according to these legal frameworks, it is not the role of competition law to provide solutions for concerns that - even though important for society - are foreign to the process of competition itself.

In other words, Latin America's normative landscape is different from the one established in the treaties of the European Union (EU), at least considering its current interpretation by a significant portion of the European legal doctrine. According to this doctrine, which is based on a holistic reading of a set of provisions of both the Treaty on the Functioning of the European Union (TFEU), as articles 7[26] and 11[27], and the EU Charter of Fundamental Rights, as article 37[28], competition policy should take into account environmental policy goals. In this regard,

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20 For an opinion against adopting an ex ante digital regulation in Latin American countries because of productivity and innovation reasons, see Zúñiga, Mario (2025), *¿Ex ante Regulation of Digital Platforms in Latin America (or the "Regulatory Reconquista")? Background, Market Dynamic and Relevant Public Policy Objectives*, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5011229

21 OECD et al. (2020), *Latin American Economic Outlook 2020: Digital Transformation for Building Back Better*, p. 29, available at: https://www.oecd-ilibrary.org/docserver/e6e864fb-en.pdf?expires=1670992793&id=id&accname=guest&checksum=DE73D17BE0FCBD5A7604C8B8D684BB74.

22 Menz Queirolo, Eduardo (2020). *La Economía Digital en el contexto COVID-19: Desafíos en América Latina y Chile*, FLACSO, available at: https://flacsochile.org/doc/La_Economi%CC%81a_Digital_en_el_contexto_Covid19.pdf

23 Fiscalía Nacional Económica, investigation report on claim regarding vertical restrictions against Mercado Libre Chile Ltda, case number 2624-20, September 22, 2020.

24 For a list of "digital-economy" cases in the region between 2013-2020, see Abarca, Manuel and Gutierrez, Juan David (2020), *Challenges to competition and innovation in digital platforms markets: Insights from Latin America cases*, available at https://lalibrecompetencia.files.wordpress.com/2020/08/appendix-2-cases-involving-digital-platform-markets-in-lac.pdf.

25 For instance, see article 1 ("promote and defend free competition") and 54 ("substantive lessening of competition") of Decree Law 2011 (competition law of Chile); article 1 ("seeking efficiency in the markets, fair trade and the general welfare of consumers and users") of the Organic Law for the Regulation and Control of Market Power (competition law of Ecuador); article 1 ("promote the welfare of current and future consumers and users by the promotion and defense of competition law, the stimulation to economic efficiency") of Law 18.159 (competition law of Uruguay); article 1 ("to limit free competition and maintain or determine unfair prices") of Law 155 of 1959 (competition law of Colombia).

26 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".

27 Article 11 of the TFEU: "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development".

28 Article 37 of the Charter: "A high level of environmental protection and improvement of the quality of the environment must be integrat-

Simon Holmes suggests that "Failure by the competition establishment to focus on the 'constitutional' provisions of the treaties reflects a failure to note, and take proper account of, the move from a mere 'Economic Community' (under the EEC or European Economic Community) to the much broader concept of a European 'union'"[29]. This is also the idea behind the "sponge-like" character of competition law, defended by A. Ezrachi[30] (a sponge that is, however, disciplined by an "economic membrane" build on economic analysis[31]).

Although Latin America should keep an eye on the developments of the EU law, at the present moment it would be better for the region to focus on a narrower application of the competition law regime (in terms of Kuenzler: "first-generation competiton law")[32]. This means not including environmental goals in the policy mandate of competition agencies. The reasons behind this approach are at least threefold.

The first reason is the region's political and institutional instability. Many of the pillars of a strong rule of law - such as the legality principle, transparency, political accountability, and economic power decentralization - are still in their developing stage. In the case of competition agencies, there remain notable challenges regarding their independence and autonomy from the government (in some cases, the government appoints and dismisses the head of the competition authority directly, without the need to justify such removal on a legal basis)[33].

The second reason is that competition law is still maturing in the region, and its principles and standards are still being developed and learned by the agencies and, especially, by the *generalist* courts (as opposed to *specialized* courts) in charge of reviewing the agencies' decisions[34]. Usually, these generalist courts do not have any specialization in either competition law or economics, and are thus, insufficiently prepared to address complex competition cases. Moreover, it is also important to notice that the region's main judicial system is "continental" (in opposition to *common law*), where the case law (i.e., judicial precedent) is not binding. This means that the authority in charge (as well as the courts) are free to change the interpretation of competition law at any moment. Regarding this particular issue, Latin America is more closely aligned to EU civil law tradition vis-à-vis the common law approach.

ed into the policies of the Union and ensured in accordance with the principle of sustainable development".

29 Holmes, Simon (2020), *Climate change, sustainability, and competition law,* Journal of Antitrust Enforcement, 2020, 8, 354–405, p. 361, available at https://academic.oup.com/antitrust/article/8/2/354/5819564. Similarly, see Monti, Giorgio (2020), *Four options for a greener competition law,* Journal of European Competition Law & Practice, Vol. 11, No. 3–4, p. 129, available at https://academic.oup.com/jeclap/article/11/3-4/124/5804650 ("one can also draw on a holistic reading of the Treaty by which the competition policy is to be designed alongside an environmental policy. This is rendered possible by reference to Article 11 [of the TFEU]"). See also Kingstone, Suzanne (2010), *Integrating Environmental Protection and EU Competition Law: Why Competition Isn't Special,* European Law Journal, Vol. 16, No. 6, November, 780–805, pp. 787-788, available at https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-0386.2010.00533.x ("the integration principle in its Article 11 TFEU form represents a specific expression of the goal of sustainable development, and one directed at those defining and implementing all EU 'policies and activities'. This means that, in the first place, it is the integration principle, rather than the broader sustainability goal as such, which guides us in looking for instructions for decision-makers. In the second place, on any natural interpretation of Article 11 TFEU, there is no reason why decision makers in EU competition policy should be exempt from the application of the *integration principle, or indeed decision makers in any other EU policy area").*

30 Ezrachi, Ariel (2017), *Sponge*, Journal of Antitrust Enforcement, 5, 49-75, https://academic.oup.com/antitrust/article/5/1/49/2525569 ("the sponge-like characteristics of competition law make it inherently pre-disposed to a wide range of values and considerations. Its true scope and nature are not 'pure' nor a 'given' of a consistent objective reality, but rather a complex and, at times, inconsistent expression of many values").

31 Idem ("With the 'sponge' analysis in mind, one may view the economic discipline as a 'membrane' which surrounds the 'sponge' and limits its absorption properties. As such, it prevents it from 'over absorbing' values and goals which are inconsistent with economic thinking. In doing so it helps stabilize the 'sponge' by limiting and slowing its absorbency rate").

32 According to Kuenzler's categories, first-generation competition law assumes that a single theory is necessary to make competition policy consistent. Kuenzler criticizes this standpoint arguing that "First-generation competition law cannot adequately capture the realities of digital markets that implicate seemingly non-economic values such as privacy, diversity, or editorial integrity". Kuenzler, Adrian (2023), *Third-generation competition* law, Journal of Antitrust Enforcement, 2023, Vol. 11, No. 1, p. 135, available at: https://academic.oup.com/antitrust/article/11/1/133/6984749.

33 For a critical analysis the Colombian competition authority architecture, see Ibarra, Gabriel and Ibarra, Alejandro (2022), *Deficiencias de arquitectura institucional del regimen colombiano*, Investigaciones CeCo, p. 10 https://centrocompetencia.com/wp-content/uploads/2022/12/Gabriel-Ibarra-y-Alejandro-Ibarra-Deficiencias-regimen-colombiano.pdf ("The lack of independence of the SIC has generated at least three clear problems: (i) Improper interference of the executive branch in the authority's decisions; (ii) Uncertainty regarding the continuation of entity's policies with each change of administration in the executive power; and (iii) Abrupt and unforeseen changes in the interpretation of the law") (free translation).

34 Fuchs, Andrés and Mufdi, Nader (2021), Derecho de la Competencia y Regulación de Mercados Digitales: Desafíos y Propuestas para Latinoamérica, Investigación CeCo, p. 40, available at https://centrocompetencia.com/wp-content/uploads/2021/07/Fuchs-y-Mufdi-Derecho-de-la-Competencia-y-Regulacion-de-mercado-digitales-Desafios-y-Propuestas-para-Latinoamerica.pdf.

The third reason is that, in general, and despite the region's political conflicts and the state of development of competition law, the competition agencies of the region are trusted and can operate reasonably. For instance, their staff has reasonable levels of continuity, at least at medium levels. This should be taken care of. In other words, "*if it ain't broken, don't fix it*".

For these reasons, it is advisable to avoid giving Latin American competition authorities tasks or missions that are foreign to competition law. As J. Tirole has warned, there are risks in terms of loss of accountability, policy coordination, and institutional conflicts that come with entrusting competition agencies with societal objectives different from consumer welfare and economic efficiency[35], suggesting that "Creating fuzzy missions for agencies that so far have performed decently, may not be a good move"[36].

Furthermore, a single-mission framework makes the system administrable and manageable, thus enabling the agencies with the capacity to deliver effective solutions within a reasonable time period (thus increasing its legitimacy before the society). In this sense, D. Sokol suggests that "Antitrust works well because it is technocratic in that a singular (but flexible within its economics) goal is administrable institutionally. To introduce the world of political imperfections into a technical process that examines markets would create further distortions affecting consumers. Antitrust does well dealing with antitrust problems"[37].

However, one thing is that competition law should not be instrumentalized to achieve exogenous goals, while another is that competition law becomes an obstacle for business collaborations or environmental initiatives that, if properly assessed under a first-generation competition law framework, may increase consumer welfare. As C. Volpin explains, "this approach does not require broadening the consumer welfare standard, but rather adjusting the traditional analytical tools to measure the full economic effects of a conduct or transaction"[38]. In other words, it is feasible to sustain a threefold approach (i.e., competition, sustainability and data) within a single-mission competition law system.

In fact, competition authorities already perform this task, as demonstrated by several Chilean cases discussed below (Section 4). They achieve this by considering 'ancillary restraints'[39], which involves distinguishing restrictions based on legitimate business considerations from "naked" restrictions (e.g., greenwashing). Furthermore, competition agencies are experienced in conducting a balancing analysis between the anticompetitive effects and the pro-competitive effects of market conduct.

Taking this into account, there are at least two ways in which the connection between competition and environmental protection can be deepened: **(i)** reflecting on the scope of the traditional concepts of competition law; and **(ii)** issuing special regulations aimed to enable pro-environment initiatives yet involving

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35 Tirole, Jean (2022), *Socially Responsible Agencies*, available at: https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/by/tirole/socially_responsible_agencies_071222.pdf ("Multiple missions given to a single agency may reduce accountability. Most obviously when tasks are incompatible: One cannot ask an agency to do something and its contrary, as when e.g., one asks an electricity utility to both sell more electricity and advise consumers on how to conserve energy").

36 Ibid., p. 7.

37 Sokol, Daniel (2020), *Antitrust's 'Curse of Bigness' Problem*, Michigan Law Review, 118, p. 1259, available at https://repository.law.umich.edu/mlr/vol118/iss6/16/

38 Volpin, Cristina (2020), *Sustainability as a Quality Dimension of Competition: Protecting Our Future (Selves),* July, p. 3, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3917881.

39 In the context of EU competition law, ancillary restraints are restrictions to competition that are objectively necessary to facilitate a legitimate commercial activity or regulatory goal. See Whish, Richard and Bailey, David (2018), *Competition Law*, 9nth edition, Oxford University Press, p. 359. Paradigmatically, in the case *Wouters v. Algemere*, the Court of Justice of the EU stated that "(...) not every agreement between undertakings or any decision of an association of undertakings which restricts the freedom of action of the parties or of one of them necessarily falls within the prohibition laid down in Article [10(1)] of the Treaty (...) account must first of all be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects. More particularly, account must be taken of its objectives (...) It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives" (Case C-309/99 EU:C:2002:98, para. 107).

competition authorities in the process. In both strategies, new data-based tools can play an important role. Principio del formulario

i. Rethinking the scope of the traditional concepts of competition law

As it has been noted, the scope of traditional concepts in competition law, such as consumer welfare, quality, efficiency and innovation, extends beyond mere short-term price competition[40]. These concepts are continuously being expanded and investigated to encompass broader considerations. For instance: Can the standard of consumer welfare consider non-monetary parameters (e.g., life expectancy, capabilities)?[41]; Can it consider consumers from different relevant markets than the one affected by the conduct or agreement (e.g., any person affected by gas emissions), or even consumers of the same market but from future generations? Moreover, could quality include non-monetary features of the product that are valued by consumers, as the fact of being produced under a circular economy framework or in compliance with environmental standards? Finally, could a dynamic concept of efficiency justify collaborations aimed at improving environmental standards, even if they cause short-term increase in the prices of the goods (and services)?

The aforesaid parameters are difficult to measure by competition agencies, at least in comparison to the analysis of short-term price effects. As J. Padilla suggests, the challenge here "is to clarify the notion of consumer welfare so that agencies and courts understand that it is an encompassing concept, which can accommodate all those price and non-price factors that provide utility and, hence, affect consumer choice and market demand"[42-43].

In the answers to these questions, the development of the IoT, data analytics, blockchain, and AI, may be useful to develop effective tools to quantify the effects of market conducts and collaborative agreements.

For instance, with the help of these technologies and data analysis techniques, such as reductions of CO_2[44], the costs of recycling cycles, or health benefits - in terms of life expectancy - may be measured and even expressed in monetary terms[45]. The chances of success of this strategy increase if applied within a cooperation framework between competition authorities and industry regulators, both at a national and at an international level.

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40 See Spulber, Daniel (2022), Antitrust and Innovation, Journal of Antitrust Enforcement, 00, p. 14, available at https://academic.oup.com/antitrust/article/11/1/5/6593929 ("Antitrust policy should apply economic frameworks that recognize both non-price competition and technological change. Non-price aspects of competitive conduct affect consumer welfare and economic efficiency. Innovation competition requires that antitrust policy makers take a dynamic perspective toward competitive conduct").

41 In this regard, Eva van der Zee put forward the distinction between "monetary well-being" and "human well-being", noting that the European Commission "never made it explicit in its guidelines that only benefits with a clear monetary value could be taken into account". Van der Zee, Eva (2020), Quantifying Benefits of Sustainability Agreements under Article 101 TFEU in terms of Human Well-Being, ILE Working Paper Series, No. 31, University of Hamburg, Institute of Law and Economics (ILE), Hamburg, p. 3, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3631811. This author also explains that "There are generally two approaches underlying HWB [human well-being]: subjective well-being or utility (ie happiness, preferences) and objective well-being (ie material resources, capabilities). For a long time, it was only possible to measure HWB in terms of preferences or material resources. So, subjective well-being was often measured by asking individuals about their preferences in monetary terms (stated preferences) or by distilling these preferences through their revealed behaviour (revealed preferences). Objective well-being was measured by assessing solely material resources that come with a price tag (such as income and resources). However, scholars have developed techniques to measure happiness and capabilities as well in comparable units that go beyond mere preferences or material resources. As such, it is now possible to measure HWB more precisely and balance the different aspects of well-being against each other in a CBA" (pp. 6-7).

42 Padilla, Jorge (2022), *Neoclassical Competition Policy Without Apology*, p. 11, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4266176

43 See also Khan, Lina (2017), *Amazon Antitrust Paradox*, The Yale Law Journal, 126:710, p. 737, available at: https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyyeh.pdf ("Critically, consumer interests include not only cost but also product quality, variety, and innovation. Protecting these long-term interests requires a much thicker conception of "consumer welfare" than what guides the current approach").

44 In this sense, J. Tirole: "The competition authority may be able to acquiesce to such agreements provided it has a clear objective trading off harm to the consumer or competition against the environmental benefit (which requires putting a price on carbon8) and that it carefully monitors the industry's compliance with its societal pledges". Tirole, Jean (2022), p. 5.

45 OECD (2020), *Sustainability and Competition*, OECD Competition Committee Discussion Paper, p. 26, available at http://www.oecd.org/daf/competition/sustainability-and-competition-2020.pdf ("it seems possible to calculate the overall benefit to society and then divide it and thereby calculate the individual benefit. An example of such an approach can be found in the Dutch coal power case. In this case, an agreement to close coal fired power stations was at issue. In the opinion given by the agency, it used avoided cost measurement and examined the price increase in relation to health benefits and increased life expectancy expressed in monetary terms").

On the other hand, while the promotion of environmental objectives related to sustainable development may pose challenges within the competition law framework, it may encounter fewer obstacles when it comes to promoting the circular economy. This is because both traditional competition law and the circular economy share a common goal: efficiency. Both seek to maximize value while minimizing resource usage[46]. The relevance of data-based solutions (e.g., blockchain and *geo-localization*) to achieve efficiencies in terms of traceability and management of waste within a circular economy initiative will be explained below (see Section 4-c).

Moreover, date-based technologies could also be useful to apply the dynamic concept of efficiency (which has already been used by competition authorities to assess innovation-driven mergers). Thus, collaborative initiatives aimed to achieve better environmental standards (e.g., by producing fewer emissions or making better use of recycled material) could be examined in a similar way to R&D collaborations aimed to improve production processes[47].

This dynamic assessment should also consider a big difference between Latin America and developed economies (such as the EU and the USA). In Latin America digital markets and platforms are still in their incipiency stage[48] (this means that the markets remain contestable, far from having reached their "tipping point"). This circumstance provides a considerable margin for digital and pro-environment collaborative initiatives -based on data sharing networks or mechanisms alike- to grow and develop without creating significant anticompetitive risks.

ii. Issuing special pro-environment regulations, considering competition law principles

For those bigger environmental challenges that cannot be adequately processed within the legal framework of competition law (including its principles and standards), the best strategy for the region seems to be the creation of special regulations aimed to improve environmental standards[49], including the design of legal frameworks for business collaboration.

In its turn, these special regulations may include references to competition law principles as well as mandatory approvals by the competition authorities to ensure that these collaboration frameworks do not produce anticompetitive harm. This is the case with the Chilean Extended Producer Responsibility Act (Law N°20.920), which will be commented below.

4. SUSTAINABILITY & DATA: OPPORTUNITIES IN CHILE

The next paragraphs comment on some of the recent developments that occurred in Chile. In the first place, two merger cases will be addressed, in order to show that the Chilean competition authority is already reviewing cases involving a threefold approach, but within the traditional (narrow) framework of competition law.

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46 OCDE (2023), *Competition in the Circular Economy*, OECD Competition Policy Roundtable Background Note, p. 7, available at https://www.oecd.org/daf/competition/competition-in-the-circular-economy-2023.pdf

47 For an analysis of the legal frameworks existing in the EU, USA, United Kingdom and Chile to assess R&D collaborations, see Iglesias, Juan Pablo (2023), *Acuerdos de I+D, Competencia y Propiedad Intelectual: Una Propuesta de Puerto Seguro*, Investigaciones CeCo, available at: https://centrocompetencia.com/wp-content/uploads/2023/05/Acuerdos-ID-Derecho-competencia-y-PI-Juan-Pablo-Iglesias-1.pdf

48 Abarca Meza, Manuel (2021). *Chile: Mercados digitales incipientes*, Investigaciones CeCo (junio), available at https://centrocompetencia.com/wp-content/uploads/2021/06/Abarca-Chile-Mercados-digitales-incipientes.pdf.pdf. See also CeCo's note: "Una mirada a las fusiones en mercados digitales en Latinoamérica".

49 In this regard, see Schinkel, Maarten and Treuren, Leonard (2020), p. 16 (where there is a need for coordinated implementation of more sustainable production, government should regulate it, and firms with such green initiatives should lobby the designated public authority for effective regulation, rather than the competition authorities for protection from competition).

Then, the Chilean legal reform on extended producer responsibility will be explained, in order to show that, when the desired environmental goal is broad and ambitious, the best solution is to issue a special regulation while considering competition law principles. Finally, the new Horizontal Merger Guidelines issued by the competition authority will be mentioned, considering their relations to the new trends of the digital economy and competition dynamic analysis.

a. Joint Venture "Catena-X" (data network)

As it was mentioned above, Catena-X is a platform consisting of a data network made by a Joint Venture formed between different companies - including competitors - in the automotive industry (e.g., BMW, Mercedes-Benz, Volkswagen, Siemens, and BASF). In Chile, this agreement was examined by the competition authority (FNE) as a merger.

The FNE approved the merger[50], without issuing any conditions. It is useful to attend to the reasons given by the competition authority for approving the merger, in order to grasp the opportunities for the threefold approach within a single-mission competition law framework.

Since the Catena-X is a platform to exchange information, the FNE examined the nature of this information (to determine if it was commercially sensitive). It dismissed this risk based in that "the exchanges of information may deal with matters related to compliance with certain environmental and socially responsible investment criteria, as well as the flow and quality of materials, CO2 emissions and in relation to the circular economy"[51]. This means that, at least in the context of this case, the FNE considered that the exchange of information and data necessary to comply with environmental standards was not anti-competitive.

Moreover, the FNE also considered how the framework to exchange information within the platform was designed. In this regard, it acknowledged that said platform will include significant safeguards, "including contractual provisions (general terms and conditions of the Platform), technical barriers (restricted access to data that is sensitive from the point of view of competition), as well as organizational measures (separation of IT infrastructures)"[52]. This reasoning provides an important insight: is not only the nature of the information that is important to assess a collaboration scheme, but also how this information is distributed and governed -contractually and technically- within said collaboration.

Finally, the FNE also considered the incipiency of the market in which the examined platform would be operating. Even though many of the companies involved in the Joint Venture have a significant position in the markets for the manufacture and supply of cars, the platform itself participates in a different and incipient market. In the words of the FNE: "the development of the joint Venture is carried out in a market other than that in which the Parties intervene, in which their participation is limited and which is an incipient market"[53].

b. Joint Venture of shipment cargo (blockchain platform)

This second case involves a Joint Venture between 9 companies participating in the shipment of maritime cargo (e.g., CMA CGM, Cosco Shipping Lines, Shangai International Ports, and Hapag-Lloyd). The aim of this collaboration was the development and commercialization of a digitalization solution for the commercial process associated with the shipment of maritime cargo, through a (private) blockchain technology.

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50 Fiscalía Nacional Económica, merger approval report, case number F319-2022, September 15, 2022. For a summary, see CeCo's summary note.
51 Ibid., p. 9.
52 Ibid., p. 10.
53 Ibid., p. 12.

The FNE approved the merger[54], without issuing any conditions. Although this case does not have a direct environmental perspective, it is still interesting to have an insight into how a blockchain-based collaboration was assessed by the competition authority (since this same kind of framework may be useful in environmental projects).

In this regard, considering the risk of coordination (enabled by the exchange of sensitive information), the FNE examined the structure, nature, and origin of the blockchain involved. It concluded that: "the information shared through the GSBN platform will be encrypted and will only be accessible to the parties of the transaction, without the Constituents being able to access it, unless they participate directly from said transaction (...) the foregoing since the platform will use a private and authorized blockchain solution contracted with an experienced independent third party, and whose blockchain technology has been adopted by the industry"[55].

Moreover, and in the same way, as in Catena-X's case, the FNE also considered (to approve the merger) that the joint Venture would be carried out in a market other than that in which the parties intervene, and in which is an incipient market.

c. Law 20.920 (Extended Producer Responsibility)

In 2016 and following the OECD's recommendations[56], Chile enacted Law 20.920, which established the "Framework for Waste Management, Extended Producer Responsibility and Promotion of Recycling" ("EPR Act").

The EPR Act is an economic instrument for environmental management by which producers (and importers) of certain 'priority products' (e.g., oils, lubricants, electronic equipment, packaging, and tires) must take responsibility for the waste they generate at the end of the useful life of said products. In simple words, this (extended) responsibility means that producers must finance the storage, transportation, and treatment of this waste, thus incorporating into their costs the negative externalities generated by their activity.

To take advantage of economies of scale, the EPR Act allows producers of priority products to participate jointly in non-profit organizations called 'collective management systems' ("CMS") aimed to achieve recycling goals (even when these producers are competitors). However, considering that this collaboration produces anti-competitive risks, the EPR Act requires the intervention of the Chilean Competition Court (Tribunal de Defensa de la Libre Competencia or "TDLC") in the formation and operation of these CMSs[57].

Among the aspects that should be examined by the TDLC when assessing the formation of a CMS, are the following:

i. Rules and procedures for the inclusion of a new agent (member) into the CMS: the CMS should neither operate as a barrier to entry nor allow illegal strategic or exclusionary behavior.

ii. Rules and operating procedures of the CMS: the CMS should neither allow nor facilitate the exchange of sensitive information between its members. Moreover, they should not allow or facilitate unilateral abuses (for instance, through collective dominance).

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54 Fiscalía Nacional Económica, merger approval report, case number F243-2020, October 7, 2020. For a summary, see CeCo's See CeCo's summary note.

55 Ibid., p. 14.

56 OECD (2001). *Extended Producer Responsibility, A Guidance Manual for Governments,* available at: https://www.oecd-ilibrary.org/environment/extended-producer-responsibility_9789264189867-en.

57 As a recent OECD report explains: "producer responsibility organisations perform better when they operate in competitive markets, which pressures them to strive for innovative solutions and higher quality services". OCDE (2023), *Competition in the Circular Economy*, p. 15.

iii. Bases of the tender to select waste managers: Given that CMS will have to enter into agreements with authorized waste managers, the EPR Act requires that an open tender be carried out (by the CMS) to choose who will be responsible for the different services (e.g., collection, pre-treatment, treatment and recovery of waste).

It is important to mention that article 2 of the EPR Act establishes free competition as one of its principles, stating that "The functioning of the [waste] management systems, as well as the operation of the [waste] managers, shall not attempt against free competition" (for a competition law overview of these cases, see Lema and González[58]).

The TDLC has approved (with conditions) at least six CMS: Sigenem[59], Prorep[60], GIRO[61], SGN[62], SGCNFU[63], SIG[64] and SIGA[65]. In this regard, one example of application of data solutions within the operation of a CMS is related to the way in which a CMS can determine the prices (also called "tariffs") that it will charge to their members (i.e., producers), in exchange for the waste management services. For instance, according to the information provided by the CMS "SIG" to the TDLC, for the cost assessment and tariff definition, this entity will require its members to annually report the quantity of packaging they will place on the market, its capacity, unit weight, materiality, and hazardousness. This data (collected by SIG) would be presented in an aggregated manner to its members, with the aim of informing them about the quantity of packaging placed on the market and the corresponding target to be met[66].

Furthermore, it is reasonable to expect that the development of data-based solutions as data networks, blockchain, and IoT (including *geo-localization*), may increase the opportunities for CMS to achieve better efficiencies in terms of traceability, monitoring and managing of waste (however avoiding the risk of coordinated action)[67]. Hence, the challenge for the competition agency is double: avoid anticompetitive risks generated by the exchange of sensitive information while allowing the reasonable operation of CMS (in order to achieve the goals of the EPR Act).

d. 2022 Horizontal Merger Guidelines (FNE)

In May, 2022, the FNE published its new "Horizontal Merger Guidelines" (HMG). This document includes a chapter on "Dynamic and Innovation Markets", a chapter on "Digital Platforms and Digital Markets", and a section on "dynamic efficiency".

Moreover, the HMG review some of the ideas that have been in vogue in competition law abroad, such as the variations in the definition of the relevant market where a platform is involved; the 'tipping' effect, non-price effects and the importance of data in digital markets.

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58 González Verdugo, Catalina and Lema Abarca, Cristóbal (2022). *Ley Rep y Libre Competencia: De la teoría a la práctica - Primera Parte*, Investigaciones CeCo (October), available at: https://centrocompetencia.com/wp-content/uploads/2022/10/Lema-y-Gonzalez-Ley-REP-y-libre-competencia-parte1.pdf

59 Report Nº 26/2022 of the TDLC, issued on August 8, 2022. See CeCo's summary on: https://centrocompetencia.com/jurisprudencia/informe-agrosuper-otros-bases-de-licitacion-y-reglas-sigenem-2022/

60 Report Nº 27/2022 of the TDLC, issued on September 13, 2022. See CeCo's summary on: https://centrocompetencia.com/jurisprudencia/solicitud-de-informe-de-rigk-respecto-de-reglas-de-funcionamiento-e-incorporacion-de-socios-de-prorep/

61 Report Nº 28/2022 of the TDLC, issued on September 15, 2022. See CeCo's summary on: https://centrocompetencia.com/jurisprudencia/bredenmaster-y-otras-por-bases-de-licitacion-y-reglas-de-funcionamiento-e-integracion-de-nuevos-socios-de-giro/.

62 Report Nº 29/2022 of the TDLC, issued on December 5, 2022, summary on https://centrocompetencia.com/jurisprudencia/informe-gildemeister-sistema-colectivo-de-gestion-de-neumaticos/.

63 Report Nº 30/2022 of the TDLC, issued on December 5, 2022, summary on https://centrocompetencia.com/jurisprudencia/antonio-castillo-bases-de-licitacion-sgcnfu/.

64 Report Nº 31/2022 of the TDLC, issued on March 3, 2023, summary on https://centrocompetencia.com/jurisprudencia/adama-chile-s-a-y-otras-por-bases-de-licitacion-y-reglas-de-funcionamiento-e-integracion-de-nuevos-socios-de-sig-campolimpio/

65 Report Nº 32/2022 of the TDLC, issued in September 15, 2023, summary on: https://centrocompetencia.com/jurisprudencia/ford-motor-company-chile-spa-y-otros-por-bases-de-licitacion-y-reglas-de-funcionamiento-e-integracion-de-nuevos-socios-de-siga/

66 Report Nº 31/2022 of the TDLC, p. 12

67 OCDE (2023), *Competition in the Circular Economy*, p. 11, available at https://www.oecd.org/daf/competition/competition-in-the-circular-economy-2023.pdf ("Data collection and information exchange may be necessary to provide the product or the service or to make it circular. Sharing data may enable technological research for the reduction of waste, it may enable more efficient transport coordination along the supply chain; or it may allow collective switching to electric vehicles).

Regarding non-price effects, the HMG states that, in horizontal mergers, the agency will carefully analyze the competitive effects in markets: **(i)** where "risks of impairment of non-price variables can be generated, such as platform terms of use (e.g., privacy policies) or the incentives to innovate of the merging parties"[68], and **(ii)** where "a result of the combination of certain information assets from the merging parties (for example, databases of their consumers and their preferences), barriers to entry or expansion are facilitated, which could lead to a weakening of competition if it grants them a competitive advantage that is difficult to replicate by other players"[69].

These criteria have been already applied. For instance, on May 29, 2020, the Fiscalía Nacional Económica approved the acquisition of Cornershop Technologies LLC (a delivery app) by Uber Technologies, Inc[70]. In its approval report, it analyzed: "the possibility of exclusion or significant weakening of competition, extending the merged entity's relevant position in one market to another, through (...) the concentration of data and user information that provides a competitive advantage, making the merged entity uncontestable for competitors"[71]. Furthermore, and following the Facebook decision in Germany, the Fiscalía also examined the "exploitative effects that may arise regarding end consumers, concerning the handling of their personal data"[72].

CONCLUSION

The normative question of what should be the connection between data, sustainability, and competition law should be answered by each jurisdiction without being a *one-fit-for-all* solution.

Even though Latin America should keep an eye on the developments of the EU and USA's legal systems and case law, at the present moment it would be more advisable for the countries in this region to keep focusing on a narrower application of competition law. The institutional conditions of Latin America (e.g., rule of law/ legality principle, accountability, and transparency) are still developing and maturing.

As a matter of fact, the single-mission framework had made the competition law system in Latin America "administrable", and had enabled the agencies with the capacity to deliver effective solutions within reasonable time-periods, thus increasing its legitimacy before society. This feature is not common in the region's institutions, so it should be preserved. This, especially considering that competition law's principles and standards are still maturing in the region, particularly by the general courts in charge of reviewing the agencies' decisions.

Nevertheless, the single-mission framework of competition law can get sophisticated. Concepts as "consumer welfare", "quality", "dynamic efficiency" and "innovation" are open and encompassing, thus being suitable to register and process some environmental concerns. As a matter of fact, competition authorities already perform this task in their day-to-day practice. In this task, competition authorities could use data analysis techniques and digital tools to measure and quantify the economic and social effects of market conducts concerning the environment.

However, for more ambitious challenges -which we should certainly assume considering the urgency of climate change-, instead of pressuring competition agencies, special regulations should be adopted (such as the Chilean EPR Act), aimed to enable pro-environment collaborative initiatives, involving competition authorities in the process.

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68 HMG, p. 35.
69 Idem.
70 Fiscalía Nacional Económica, merger approval report, case number F217-2019, May 29, 2020. For a summary, see CeCo's See CeCo's summary note.
71 Ibid., p. 43.
72 Idem.

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