

Competition policy challenges in the digital economy

The rapid digitalization of the economy has transformed the competitive landscape and has resulted in significant benefits for both businesses and consumers. The disruptive innovation, triggered by the process of creative destruction, enabled the development of new production, distribution and marketing methods (e.g., digital marketplace) and has facilitated the emergence

of new products (e.g., social media networks). Due to some specific characteristics, prominently the economies of scale and strong network effects, digital markets are often tippy with winner-take-all outcomes (e.g., tech giants like Facebook, Amazon, Apple, Google). Hence, digital markets are inclined to be more concentrated than traditional markets.

Due to their size and the importance of cooperating with them by third parties, these companies have incentives to undertake novel anti-competitive practices to maintain and/or enhance their market power. This possibility, along with the ever-increasing dependence of users on their products, has instigated additional challenges for competition policy, both in terms of the suitability of the legal framework and the adequacy of the enforcement tools.

The growing concerns of the national competition authorities and the European Commission in regard to the digitization of markets is reflected in the large number of studies carried out in recent years on the challenges of competition policy in



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the digital age and the implications of the accumulation of large volumes of data by a small number of firms for market dynamics.

Despite the challenges, both the European Commission and several national competition authorities have demonstrated their willingness to set the technology giants responsible for their actions. This is signified by the increased enforcement activity against tech giants in recent years. A prominent illustration is the European Commission's decisions against Google for abuse of its dominant position regarding Google Shopping, AdSense and the Android operating system. The total fines against Google in the above cases amount to €8,25 billion! The Italian competition authority has also put Google under the spotlight for allegedly refusing to integrate competing applications to the Android Auto operating system used in electric cars.

More recently, the European Commission has opened a formal investigation against Amazon for suspected anticompetitive practices involving the Amazon Marketplace retail platform. The concerns focus on Amazon's hybrid role, on the one hand, Amazon offers a retail marketplace for third-party sellers to offer their products to consumers; on the other hand, Amazon offers its own products through its marketplace, thus directly competing with the third-party sellers using its marketplace. As a result of this dual role, there are concerns that Amazon is exploiting its competitors through specific terms included in the third-party seller service agreements. Moreover, there are concerns that Amazon uses commercially sensitive data collected from third-party sellers (e.g., transaction data) who rely on its online marketplace to promote its own product offering. It is worth noting that on the same day that the European Commission announced the opening of its formal investigation, the German and the Austrian competition authorities announced that they are closing their investigations against Amazon since the latter undertook specific commitments (e.g., change several clauses in

terms and conditions of third-party seller service agreements). It is noteworthy that the Italian Competition Authority is also investigating Amazon.

Also, it should be pointed out that the European Commission has recently decided to launch an in-depth investigation against Apple, following a complaint by Spotify. The investigation will focus on allegations that Apple is using several potentially anticompetitive practices to limit the degree of integration and interoperability of competing services (e.g., Spotify) to the Apple app store platform, thus undermining their competitive position. It is worth mentioning that the Netherlands Competition Authority is also carrying out an investigation against Apple for similar practices.

Along these lines, a remarkable decision was issued recently by the German Competition Authority against Facebook over its data collection and processing policy. In particular, Facebook was found to have abused its dominant position on the social network market by not offering its users the option to refuse the collection of their data on third-party websites and to the linkage of their Instagram and/or WhatsApp data with their Facebook account.

Conclusively, the shift in market dynamics and the difficulty of reinstalling competition in digital markets due to their tippy nature, pose new challenges for competition policy. The willingness shown to this point by the competent competition authorities to step in and control the conduct of tech giants makes us optimistic that digitization will continue to be a central driver to future prosperity.



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