



## Challenges for competition policy in the digital era



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The digital economy is of paramount importance for raising the EU's competitiveness. It is anticipated that the creation of a single digital market will boost economic growth, adding more than €400 billion per year to the EU GDP.

Competition policy can play a critical role in the complex process of unifying the fragmented digital markets in the EU. It has to be noted that the digital markets are characterized by the presence of network effects (direct and indirect) that promote concentration in markets and innovation that makes markets contestable, which render the digital market dynamics fundamentally different from other markets. In this framework, the main challenges of competition policy are to prevent the creation of barriers to entry or expansion that give rise to fragmentation of markets and foster inno-

vation. These challenges are reflected in the Commission's recently announced e-commerce sector inquiry but also in a sequence of high-profile competition cases which are under the spotlight. Some of these cases are illustrated below.

The most prominent cases under investigation involve Google. A first case concerns the Android mobile operating system (the leading operating system for smart mobile devices in the EU) whereby the Commission is examining whether Google has exploited its dominant position by i) requiring or incentivizing smartphone and tablet manufacturers to exclusively pre-install Google's own applications, ii) preventing smartphone and tablet manufacturers to develop or sell modified and potentially competing versions of Android (known as «Android forks») and



iii) tying or bundling certain Google applications distributed on Android devices with other Google applications. After a thorough analysis, the Commission has come to the preliminary view that Google's practices hamper the development and market access of rival mobile operating systems and mobile applications.

The second case which involves Google is related to the general internet search services. In particular, the Commission is investigating whether Google has systematically favor its own comparison shopping product (currently called «Google Shopping») in its general search result pages, for instance, by showing it more prominently at the top of the search results. According to the Commission, this practice artificially diverts traffic from rival comparison shopping services and their ability to compete in the market, to the detriment of consumers and rival comparison shopping services, as well as stifling innovation.

The Commission is also investigating two cases against Qualcomm, the largest supplier of baseband chipset in the world, in the field of baseband chipsets used in consumer electronic devices, such as smartphones and tablets, for the voice and data transmission. In particular, the Commission is examining potential abuse of Qualcomm's dominant position by i) offering financial incentives (i.e. rebates) to major smartphone and tablet manufacturers on condition that they buy the baseband chipsets exclusively from it and ii) engaging in predatory pricing by charging prices below its costs in order to exclude its rivals from the market.

The Commission is also currently investigating certain business practices by Amazon in the distribution of electronic books (e-books).



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In particular, it examines whether the clauses included in Amazon's contracts with various publishers whereby Amazon is granted the right to be informed by publishers about more favorable or alternative terms offered by its competitors and the right to terms and conditions at least as good as those offered to its competitors are anticompetitive. According to the Commission, these clauses potentially discourage the development of new and more innovative services, thus thwarting competition between rival e-book distributors and limiting consumers' options.

The agreements between Sky UK and six major US film studios (Disney, NBV Universal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros) are also scrutinized by the Commission. In its preliminary conclusions, the Commission found that each of the six studios and Sky UK have bilaterally agreed to put in place contractual restrictions the prevent Sky UK from allowing EU consumers located elsewhere to access, via satellite or online pay-tv, services available in the UK and Ireland (a practice called «geo-blocking»).

The Commission considers that such clauses restrict passive sales by granting absolute territorial exclusivity to Sky UK and/or other broadcasters, thus eliminating cross-border competition between pay-tv broadcasters and segregating the internal market along national borders. ■