

Panel: The Digital Markets Act: Underlying Theories of Harm

Discussion

The New Competition Tool for Digital Markets

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Digital Markets Act: Rules/Regulation and New Competition Tool for Digital Markets

- (1) Ex-ante regulation for dominant online platforms (gatekeepers)
- (2) New Competition Tool for digital markets

Digital markets

- More than just (dominant) online platforms
- More and more difficult to distinguish from traditional markets as more and more business models rely on digital tools

Rules and Regulation

Regulation

- Appropriate for markets with stable long term perspective
- But: digital markets changing constantly
- Thus: **Rules** are preferable option

Rules

- Blacklist of problematic practices, e.g. self-preferencing...
- Positive list relating to data access, data portability, interoperability ...

New Competition Tool

Greg Crawford, Patrick Rey and I have written a report on the NCT for the Economic Advisory Group on Economic Policy, commissioned by the Chief Economist

[An Economic Evaluation of the EC's Proposed New Competition Tool](#)

NCT: Based on UK Market Investigation

Examples for Theories of Harm

- Tacit collusion (cement)
- Demand side issues (retail banking)
- High concentration and barriers to entry (airports)

Little experience with **digital markets**

- Notable exception: online advertising (market study)
- Omnibus case involving: network effects, economies of scale, lack of transparency, unequal access to data, demand side issues
- Recommendation: Creation of digital regulator, code of conduct, pro-competitive interventions

EC considers two types of structural competition problems

- **Lack of competition** (due to high concentration, barriers to market entry, network effects, economies of scale, lack of essential inputs like data, lock-in of consumers, tacit collusion...)
- **Risk of insufficient competition in the future** (e.g. tipping of markets; markets with strong scale economies, network effects, lock-in-effects etc...)

Key advantages of NCT

Holistic pro-active approach

- Focus on anticompetitive **effects**, not on anticompetitive **behavior**: no search for culprits, no fines
- Focus on all relevant market parameters, including behavioral issues like biases, not just firm conduct

Remedies could include

- Behavioral remedies (for all companies)
- Structural remedies

We see a strong case for this tool

In markets where **harm has already affected** the market

- Address factors that **prevent competition in markets**
- **Broad scope within and across sectors**
- **Consumer protection issues** should be included

In markets where **harm is about to affect** the market

- Foster competition “for the market”
- Prevent leveraging of market power in concentrated market into an adjacent market

But we need to deal with potential problems and present convincing remedies

Problems (playing devil's advocat)

- What is relevant counterfactual?
- What is welfare function? (Consumer welfare, short-term gains versus long-term losses, competition as such, innovation...)
- How do we avoid legal uncertainty? Are remedies predictable for firms? Do they hold up in court?
- Consumer issues: Some remedies like portability require coordination on the consumers' side, how to make this happen?
- How to deal with behavioral biases? What if, e.g., information is provided, but consumers don't act on this information (UK)?

But we need to deal with potential problems and present convincing remedies

On a more general level

Is this about **designing the ideal economy?**

- How do we evaluate lower welfare in the short-run, sacrificing benefits from economies of scale, versus higher value in the long-run from more competition and innovation
- Structural remedies: Is break-up too big an intervention? If size is achieved by merit, investment, efficient?
- Should one favor small companies? Start-ups? Should governments give preferential assignments to start-ups, smaller companies?

Conclusion

- Holistic approach to digital ecosystem seems useful
- Include consumer protection issues and behavioral biases as part of the assessment
- Carefully design governance structure
- State clear goal
- Avoid legal uncertainty