



# Restoring Competition in Online Platform Markets

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## Outline

- I. Introduction
- II. Specific features of online platforms
- III. Online platforms, market power and competition
- IV. Policy responses



## Introduction

**Google:** Online search engine; online search advertising

**Apple:** Mobile device market; application store.

**Facebook:** Online messaging and social networking.

**Amazon:** Marketplace and cloud computing.

**Microsoft:** Cloud computing.

## II. Specific features of online platforms

- Reliance on data – collection, storage, analysis and monetization of data (direct selling of data and online advertising).
- Multisided business models: «Free» services on one side of the platform and revenue generation on the other side.
- Network effects (direct and indirect)
- High up-front costs and low marginal costs
- Economies of scale and scope
- Switching costs
- High barriers to entry

### Implications for competition

- Information asymmetries and control over data – information about traders and consumers - confers market power to platforms .
- Leveraging of market power on one side into the other side of the platform.
- Platforms with dual role as platform operators and retailers competing with independent traders on their platforms (self-preferencing and access to independent retailers' data).
- Resemblance to essential facilities – gatekeeper platforms and market power.

# III. Online platforms, market power and competition



## Implications for competition (cont'd)

- Expansion into new markets - easier compared to new competitors (capacity to offer lower prices, more revenues for marketing).
- Acquisition of new entrants, potential competitors.
- Competition *for* the market and NOT *in* the market.

## IV. Policy responses

### How to Restore and Promote Competition in Digital Platforms Markets

1. Competition law enforcement – adjusting tools and analysis to the realities of digital platforms
2. Fair competition legislation
3. Other relevant legislation
4. Regulation

# 1. Competition Law Enforcement



1. Competition authorities need to be flexible and adapt their tools and analysis to the new business realities.
  - Need to look at markets with less focus on market shares and more focus on competitive relationships and business strategies across market spaces.
  - Need for new criteria for market power assessment of online platforms:
    - Direct and indirect network effects; parallel use of services from different providers; switching costs for users; economies of scale based on network effects; access to data relevant for competition; innovation-driven competitive pressure; abusive/exploitative terms of business and practices.

# 1. Competition Law Enforcement (cont'd)

## 2. Competition law enforcement needs to be bolder and faster.

- The standard of proof should be lowered and the burden of proof in competition investigations needs to be reversed.
- Interim measures need to be used more often.

# 1. Competition Law Enforcement (cont'd)



## 3. Merger control regimes need a reform.

- Need to adjust merger notification thresholds to be able to review the acquisition of start-ups by dominant platforms.  
Ex: Austria and Germany introduced transaction-value based thresholds.
- Merger analysis should take into consideration the features of online platform businesses, including of data and data-driven economies of scope, and innovation effects.
- Impact of a merger or acquisition on potential competition and harm to innovation.
- Efficiencies from mergers should not be presumed but be proven by strong supporting evidence by parties, which have greater knowledge and better access to relevant information.
- Public interest test for data-driven M&As.

## 2. Fair competition legislation



- Need for a legal framework on unfair trade practices and abuse of superior bargaining power.
- Difficulty of using abuse of market power provisions in some cases.
- Dependence of smaller businesses on dominant platforms to sell online, especially in marketplace platforms.
- Dominant platforms exercising unfair contractual terms vis-à-vis their business users AND consumers – abuse of superior bargaining power.
- Not a new tool and could protect business users AND consumers in their contractual relationship with large platforms (ex: Japan and Korea).

# Types of unfair trade practices by big platforms identified in JFTC's study



- Unilateral revision of contracts with marketplace sellers (abuse of superior bargaining position).
- Digital platforms with a dual role as marketplace operator and trader, in competition with other traders, using transaction data from the latter or arbitrarily manipulating search algorithms (interference with a competitor's transaction).
- App stores preventing consumers from downloading apps from their competitors (interference with a competitor's transactions).
- App stores unreasonably forcing app developers to adopt an in-app payment method and not accepting any other payment options, so that they can charge processing fee on the app developers (trading on restrictive terms).

# JFTC Guidelines on abuse of a superior bargaining position



Guidelines concerning abuse of a superior bargaining position in transactions between digital platform operators and consumers that provide personal information in December 2019.

Guidelines describe what kind of conduct of a digital platform operator, related to the acquisition or use of personal information would raise issues concerning abuse of a superior bargaining position under the Japanese Antimonopoly Act.

# 3. Other relevant legislation

- Consumer protection law.
  - Contribution of consumer law to competitive markets
  - Understanding consumer behavior (consumer inertia)
- Data protection law
- E-commerce law
- Cooperation between respective agencies at the national level.

# 4. Regulation

## Objectives

- Regulation to complement competition law enforcement (ex post)
- Rules to prevent anticompetitive conduct before it occurs and harms competition (ex ante)
- Provide for greater transparency, non-discrimination and fairness in platforms' dealings with business users
- Facilitate switching by consumers and entry by new firms.
- Prevent practices benefitting from/abusing consumer biases and inertia, like default settings.

# 4. Regulation

## How?

- Code of conduct for dominant platforms (“firms with strategic market status”)
- Data portability/mobility for consumers and open standards and interoperability between platforms
- Ensure access to non-personal and anonymized data

# Conclusions

- Promote open and accessible digital markets with fair and transparent terms for businesses through competition law enforcement, fair competition legislation and regulation.
- Effective e-commerce, competition, consumer protection and privacy/data protection laws and policies in place.
- Interagency cooperation to effectively tackle competition and consumer issues raised by dominant online platforms.
- Regional competition rules to review mergers and fight anticompetitive practices more effectively at the regional level.
- Regional and international enforcement cooperation / coordination and exchanges of experiences and information between competition agencies – UNCTAD IGE on Competition Law and Policy.