

Regulatory challenges to promoting the potential of emerging technologies

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Reforms to competition rules and regulation in the digital economy

- Certainly should not prevent innovation and the dynamic characteristics of the digital world
- How to deal with excessive market concentration?
- Can the shortcomings of digital markets still be addressed on the basis of the competition law?
- Or should governments regulate digital services?

One concern is the market power of large platforms

	Global market share April 2018 (%)	Business activity
Google	90	Search
Facebook	66	Social media
Apple	45	Smartphone web traffic
Amazon	37	Online retail

Source: The Economist 30th June 2018, "Fixing the Internet", based on data from Global Stats Counter

Concentration can have benefits but also can cause significant harm

- It can raise prices for consumers, reduce choice, or impact the quality of the services.
- Loss of privacy
- The value of each consumer personal data
- Most importantly, it can be harder for new companies to enter these markets and scale up. This can stifle innovation as larger companies have less to fear from new entrants and new entrants hesitate to enter these markets

Antitrust in the European Union has imposed substantial fines

- Google was fined EUR 2.4bn for discriminating against rivals in comparison-shopping (2017).
- Google's EUR 4.3bn fine for forcing all Google-play services to be pre-loaded on smartphones (2018)
- According to EC, these actions "deny rivals the chance to innovate and compete on merits" and "deny customers the benefits of effective competition".
- But EC also says "it is Google's responsibility to bring the infringement to an end".

Recommendations and advisory to Governments

- Unlocking digital competition, Digital Competition Expert Panel, March 2019 (The Furman Report), UK Government
- “Competition Policy for the Digital Era”, Jacques Crémer, Yves-Alexandre de Montjoye, Heike Schweitzer, a report to the European Commission, 2019

Key Furman Report recommendations (I)

- Creating **a new digital markets unit** (either independent or as a function of an existing authority/regulator) with specific powers
 - to set a code of conduct for companies with “strategic market status”;
 - on data mobility and open standards; and
 - to secure access to non-personal anonymised data.

Key Furman Report recommendations (II)

- Adapting the **merger control rules** so that the Competition and Markets Authority (CMA) can “better stop digital mergers that are likely to damage future competition, innovation and consumer choice”.
- An obligation on digital companies that have been designated with a strategic market status to make the CMA aware of all intended acquisitions, and
- The CMA’s assessment taking account of the scale as well as the likelihood of harm.

Digital mergers

- Furman Report: "Over the last 10 years the 5 largest firms have made over 400 acquisitions globally. None has been blocked and very few have had conditions attached to approval, in the UK or elsewhere, or even been scrutinised by competition authorities."
- Facebook's acquisition of Instagram and WhatsApp, or of businesses that have given a platform a strong position in a related market (for example Google's acquisition of DoubleClick, the advertising technology business, and of YouTube)

Key Furman Report recommendations (III)

- Strengthening regulator's **competition enforcement powers** so that breaches can be dealt with more quickly and easily, adjusting also the standard of judicial review for antitrust infringements and use of interim powers.
- Monitoring of personalised pricing: where companies use their data-driven algorithms to set prices according to the individual's willingness to pay. Suggests government to monitor the use of artificial intelligence and protect vulnerable consumers

Conclusions

- A differentiated approach to large platforms imposing a code of conduct
- Reversing the burden of proof
- Competition enforcement should be targeted at specific harms based on a thorough analysis of the market and less on market definition on a case by case analysis
- Reinforced merger regime used to address potential competition problems
- Switching costs and data accessibility: better control of personal data

Thank You

**If you have any questions please contact :
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