Competition policy in digital markets

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Introduction

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Introduction

- Over the past decade, competition enforcement in digital markets has become an **increasingly important topic**
- Empirical evidence has shown strongly increasing market power across global markets, with particular **concentration in the digital sector**
- Thus, there have been **calls for invigorated enforcement**, in particular in the tech sector, where a small number of firms have outsized market power
- This presentation gives an overview over three important **areas of enforcement in the digital sector** in Europe: Exclusionary abuses (Article 102), the Digital Markets Act (DMA), and merger control in digital markets

Antitrust in digital markets

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- Digital markets present common characteristics which make them prone to entrenched (possibly dominant) market positions
  - Network effects (direct or indirect)
  - Strong economies of scale and scope
  - Data as a barrier to entry
  - Vertical integration
  - Customer lock-in
- Enforcement of Art 102 TFEU proved to be sufficiently flexible to tackle these aspects
- Examples
  - Google Shopping – self preferencing abusive in specific market circumstances – no essential facility test
  - Google Android – ecosystem benefits/risks (tipping) – relevance of status quo bias – tying test

The Digital Markets Act (DMA)

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1. The Digital Markets Act

- **Digital Markets Act (DMA) proposal** adopted by the Commission on 15 December 2020
- Final text adopted by legislator **on 14 September 2022 and entered into force in October 2022**
- DMA **does not replace consumer protection legislation** and **complements existing competition law**

2. DMA principles

- Fair and contestable digital markets
- Applies only to a limited number of undertaking: gatekeepers (designation)
- With respect to 10 Core Platform Services
- Do’s and dont’s – directly implemented or specifications
  - Example: data related practices, “neutrality” provisions, advertising
- Central enforcement by the European Commission
- Cooperation and support by national competition authorities

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Ecosystem theories of harm in merger control

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Ecosystem theories of harm in merger control

- Traditional merger control has taken a more **static view of markets**
- Modern theories of harm take a **more dynamic view** of how a merger may change the future development of markets in developing ecosystems
- Concern: merger protects core monopoly and captures rival entry points in adjacent markets => complementary merger **but horizontal concern**
- Relevant **dynamic elements of such theories** of harm can be: (i) potential competition (e.g., „killer acquisitions), (ii) innovation competition (e.g., *Dow/DuPont*), (iii) defensive leveraging (e.g., compare *Google/DoubleClick* v. *Google Adtech*)

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Thank you