

## ICN UWG – TOKYO 2023 Breakout Session 1

Tackling **digital fairness and economic dependence**: what, how and why ?

Fayrouze Masmi-Dazi  
Partner @Dazi.law  
NGA @French Competition Authority

**dazi**  
AVOCATS À LA COUR



# Back to basics : what facts in the digital world are we trying to tackle?

A situation : of **exploitation enabled by a significant imbalance of powers, asymetry of information and regulation**

- **Relative domination** (and not necessarily dominance) of one undertaking;
- **Vulnerability of an ecosystem of business users** (individually and/or collectively) to access end users;
- **Subject to a set of abnormal, unfair, and/or excessive restrictions;**
- **Without objective, necessary and proportionate justifications;**
- **And which may harm actually or potentially one or several market(s) functioning.**



Picture generated by DALL-E

An AI picture generation technology

# Imbalance of powers: how digital exploitation may be addressed?

Beyond abuse of dominance, a renewed interest in other legal tools (existing or new):

- **Vertical restrictions** when imposed through contractual provisions c.f. revised EU vertical regulation and guidelines and its update on platform economy issues;
- **New targeted regulation**: the Digital market act and other regulatory initiatives around the world;
- **Economic dependence: a multifaceted concept with renewed interest in the digital world - Fairness**
  - **Concept was absent from EU until first appearance in the 2022 guidelines on art. 101 TFUE** for collective agreement by solo self employed platform workers;
  - The concept exists in several EU member States (Germany, France, Spain etc.); The **French Apple distribution case** : *in concreto* analysis, of a set of criteria, can be both individual and collective (coping with **digital ecosystems**). Abuse can materialize in significantly imbalanced terms and conditions, asymmetry of information;



Picture generated by DALL-E

An AI picture generation technology

# Digital exploitation: why is a coordinated approach (local & global) needed?

A truly global reach with business partners affected everywhere and whole ecosystems impacted



Picture generated by DALL-E

An AI picture generation technology

- **Demultiplication of national litigation** (private and/or public enforcement) ► variety of outcomes, with geographical limitations reducing efficiency;
- **Complexification through venue provisions and choice of applicable law** ► need to ensure effective access to a judge somewhere in the world, to enable efficient outcomes;
- **Converging views in national reports** ► see mobile ecosystems and app stores (Japan, US, UK notably);

Coordination is key to find effective and worldwide consistent outcomes

どうもありがとう