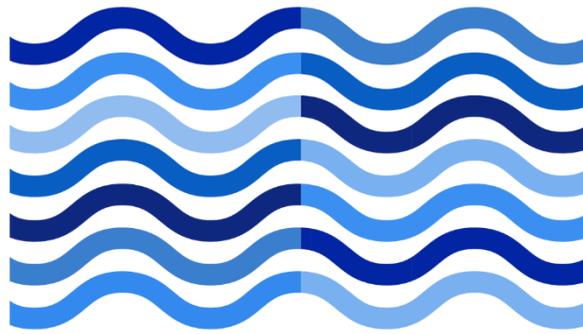


# G7

United Kingdom 2021



## **Compendium of approaches to improving competition in digital markets**

29 November 2021



## Contributing authorities



Competition Bureau  
Canada

Bureau de la concurrence  
Canada



Fair Trade Commission





## Contents

*Page*

<b>1. Overview</b> .....	<b>5</b>
<b>2. Introduction</b> .....	<b>8</b>
<b>3. Key Challenges</b> .....	<b>11</b>
Market power .....	11
Challenges to existing competition approaches .....	13
<b>4. Key Findings</b> .....	<b>15</b>
Section A: Key issues in digital markets .....	16
Section B: Strengthening competition authorities .....	23
Section C: Reforms to existing powers and approaches .....	26
Section D: The importance of regulatory cooperation .....	31
<b>5. Conclusions and next steps</b> .....	<b>38</b>
<b>6. Submissions</b> .....	<b>39</b>
Canada - Competition Bureau Canada .....	39
France - Autorité de la concurrence .....	47
Germany - Bundeskartellamt .....	53
Italy - Autorità Garante della Concorrenza e del Mercato .....	60
Japan - Japan Fair Trade Commission .....	65
UK - Competition and Markets Authority .....	71
US - Federal Trade Commission .....	76
US - Department of Justice .....	79
European Commission – Directorate-General for Competition .....	87
Australia – Australian Competition and Consumer Commission .....	92
India – Competition Commission of India .....	98
South Africa – Competition Commission South Africa .....	102
South Korea – Korea Fair Trade Commission .....	107



## 1. Overview

- 1.1 In April 2021, the CMA was asked to convene a meeting of G7<sup>1</sup> competition authorities to discuss long term coordination and cooperation to promote competition in digital markets. As part of this work, thirteen competition authorities<sup>2</sup>- those of the G7 and four guest authorities<sup>3</sup> have worked together to discuss our respective approaches to promoting competition in digital markets, identifying commonalities as well as opportunities for cross fertilisation. This compendium provides an overview of these policy approaches.
- 1.2 The growth of digital markets has brought enormous benefits to business, consumers, and society as a whole. At the same time, digital markets have created new challenges for competition enforcement and policy. Around the globe, governments and competition agencies are reflecting on how best to address these challenges. This compendium provides a high-level overview of current developments in each jurisdiction, including enforcement actions, policy projects, and legislative and regulatory reforms and proposals. Looking across jurisdictions provides valuable insight into common concerns and approaches and serves as a starting point for developing a consensus view on these global challenges.
- 1.3 The compendium highlights the vast amount of activity competition authorities are dedicating to digital markets, and that there is a high level of commonality in the approaches that authorities are taking to address competition concerns. Most agencies have opened investigations, conducted studies, or brought enforcement actions to address concerns about the exercise of market power of platforms e.g. in (i) digital advertising markets, (ii) app stores, and/or (iii) online marketplaces. These initiatives involve concerns about misuse of data and data aggregation as a barrier to entry, self-preferencing, parity obligations

---

<sup>1</sup> The G7 (Group of 7), is a forum where the world's most influential and open societies and advanced economies are brought together for close-knit discussions on issues such as finance, climate, technology, trade, health and foreign development See here: [2021 G7 Summit – UK Presidency \(g7uk.org\)](https://www.g7uk.org/)

<sup>2</sup>The G7 competition authorities are: Autorità Garante della Concorrenza e del Mercato (Italy), Autorité de la concurrence (France), Bundeskartellamt (Germany), Competition Bureau (Canada), Competition and Markets Authority (United Kingdom), Department of Justice (United States of America), Directorate General for Competition (European Commission), Federal Trade Commission (United States of America) and Japan Fair Trade Commission (Japan).

<sup>3</sup> The UK invited Australia, India, South Korea and South Africa as guest countries to this year's G7, and the competition authorities for those countries – Australian Competition and Consumer Commission (ACCC), Competition Commission of India (India), Korea Fair Trade Commission (South Korea) and Competition Commission South Africa (South Africa) – also made contributions to this compendium.

(also known as Most Favoured Nation clauses (MFNs), non-competes, information exchange or price fixing, abuse of superior bargaining position, and other conduct. While most agencies have investigations or enforcement actions involving the largest tech companies, many also have brought action against smaller tech firms operating in national or regional markets.

- 1.4 Many competition authorities are also grappling with new complex issues within digital markets, like the role of algorithms. Authorities are trying to understand new and next generation technologies so they can address competition concerns at an earlier stage and, ultimately, prevent harm from occurring.
- 1.5 In scrutinising mergers and acquisitions, many competition authorities have blocked or remedied deals involving concerns about how the merged entity would use data to entrench market power, mergers involving nascent digital competitors, and many vertical or horizontal mergers involving software, including in consumer-facing industries. Many contributions also highlight procedural reforms introduced to increase the scope of digital transactions subject to merger review, as well as proposals to change the substantive test for merger reviews in digital markets.
- 1.6 All competition authorities are working to strengthen institutional capability and build knowledge to ensure they are equipped to address the specific challenges of digital markets. New relationships are being cultivated with other regulators, and with technical experts, to understand a range of complex issues.
- 1.7 In addition, many governments and agencies have introduced or are considering legislative reforms to address competition issues in digital markets. Recognising that the current tools may, in some jurisdictions, be insufficient, authorities and legislatures are developing solutions either to bolster enforcement tools, introduce regulation, or both. Whilst there are good reasons for these reforms to differ across jurisdictions given local market conditions and existing national frameworks, it is clear that regulatory coherence, compatible regimes, and enforcement cooperation will be essential.
- 1.8 The contributions also underscore that governments and authorities are reflecting on the interaction of different disciplines within their jurisdictions. Competition issues rarely arise in a vacuum and many of the concerns highlighted are inextricably linked with other regulatory and policy areas, such



as privacy, consumer protection, and media sustainability. To better understand and manage these challenges, competition authorities are regularly working closely with other government departments and regulators to tackle these systemic issues in holistic ways.

- 1.9 The congruence of competition agency concerns and approaches to digital markets is unprecedented in the decades of experience with global antitrust enforcement and policy. While some degree of similarity in objectives or sectoral concerns has existed in the past, this is the first time in the history of competition law and policy that so many competition authorities, and in many cases governments, have prioritised examination and investigation of the same markets and the same or similar conduct. This consonance is a demonstration of the profound international concern in this area, as well as an opportunity for the global competition community to demonstrate its deep commitment to learning from one another and supporting one another as we address these challenges individually and collectively.



## 2. Introduction

- 2.1 This section provides an overview of the G7 competition authorities' work on digital competition, including background, current projects, and expected deliverables.
- 2.2 The broad scope and global nature of digital markets as well as their economic and social impact led the UK Government to include in its 2021 G7 presidency a new Digital and Technology Track. Work under this track is focused on ensuring we build back a better, more productive, and resilient global economy with digital technology at its heart. This should support open societies in the digital and data-driven age and be guided by our shared democratic values of open and competitive markets, strong safeguards for human rights and fundamental freedoms, and international cooperation, which drives benefits for our citizens, economies, and global well-being.
- 2.3 Following a meeting of G7 digital and technology ministers in April 2021, the G7 Digital and Technology Ministerial Declaration included greater competition in digital markets as one of six important interventions to deliver on these aims. As part of this work, it asked the UK Competition and Markets Authority ("UK CMA" or "UK competition authority") to convene a meeting of G7 competition authorities to discuss long term coordination and cooperation across workstreams to promote competition in digital markets.<sup>4</sup>
- 2.4 The CMA are hosting this meeting of G7 competition authorities in November 2021. As part of this meeting, G7 competition authorities and four guest authorities are to discuss:
- (a) Our respective policy priorities for promoting competition in digital markets, both in the short and medium to long term, focusing on the policy issues individual authorities are prioritising and considering opportunities for collaboration and cooperation in areas of mutual interest.
  - (b) Our respective approaches to promoting competition in digital markets. This compendium of policy approaches provides an overview of the discussion.
- 2.5 These discussions come at a seminal point in competition policy, with governments and competition agencies around the globe reflecting on how

---

<sup>4</sup> [G7 Digital and Technology Ministerial Declaration.docx \(publishing.service.gov.uk\)](#)



best to address competition concerns in digital markets. Developed through collaboration among the national competition authorities, this compendium provides an overview of how different authorities are working to promote competition in digital markets, including enforcement and policy work. It then identifies commonalities and coherence in these approaches. The intention is for this to be an informative and useful tool for national governments, policy makers, and industry participants, as well as counterpart competition authorities and regulators grappling with similar issues.

- 2.6 To create this compendium, G7 and guest competition authorities were asked to provide contributions on:
- (a) Enforcement experience and other tools used to address competition issues in digital markets, including any particularly relevant cases.
  - (b) Institutional changes undertaken to strengthen agency capabilities to address competition issues in digital markets.
  - (c) Enacted or proposed legislative or regulatory reforms.
  - (d) Law enforcement, regulatory, or policy work by agencies concerning digital competition issues that has involved interaction with other areas of public policy, such as privacy, consumer protection, or media sustainability.
- 2.7 This compendium is organised as follows: the next section summarises characteristics of digital markets that present challenges for competition enforcement and policy; the following section describes the key findings that arise from an examination across contributions, highlighting the areas of commonality; and the final section is a compilation of the 13 individual agency contributions.
- 2.8 This competition workstream builds on a project undertaken by competition authorities during the 2019 French G7 presidency, where authorities prepared a Common Understanding on the issues raised by the digital economy for competition analysis.<sup>5</sup>
- 2.9 The compendium is a one-off exercise undertaken as part of the UK's G7 Presidency in 2021. However, the competition authorities involved are

---

<sup>5</sup> The 2019 Common Understanding can be found [here](#).



committed to continuing these important discussions and work, either through future G7 work or through other international fora.

### 3. Key Challenges

- 3.1 This section summarises the key challenges digital markets pose for competition policy and for the authorities responsible for competition law enforcement.
- 3.2 Digital markets have brought enormous benefits to businesses, consumers, and society: they allow businesses to attract new customers and grow rapidly; they allow consumers to find new products and services and to connect with each other; and they drive innovation and economic growth. These benefits have come into sharp focus during the Covid-19 pandemic.
- 3.3 However, the significant resources dedicated to studies, investigation, and enforcement highlighted in the compendium contributions indicate agencies across the globe are concerned about a lack of competition in digital markets, including the power several large firms are able to exercise over competitors and consumers. Often it is the characteristics of digital markets that have allowed these firms to achieve this power, and those characteristics pose new challenges for competition authorities and governments.

#### Market power

- 3.4 There are certain common features present in many digital markets which often lead to firms gaining a large and powerful position. These features may tend to increase market concentration, raise barriers to entry, and strengthen the durability of market power.<sup>6</sup> These common features include: (i) **network effects**; (ii) **multi-sided markets**; and (iii) **the role of data**. This can cause markets to ‘tip’ in favour of one or a small number of large firms.
- 3.5 Many digital markets exhibit positive “**network effects**”, such that the value of a service, to at least some users, increases with the number or activity of the service’s other users.<sup>7</sup> Network effects may affect competition in a variety of ways. They may provide significant benefits to users and may encourage

---

<sup>6</sup> While these features are often present in digital markets, not all these features are unique to digital markets; likewise, not all these features may be present (or significant) in any individual practice or transaction involving digital markets.

<sup>7</sup> “Direct” network effects exist when users place greater value on a business as the number or usage of *similar* users increases. For example: users may value a social network more highly as more users join. “Indirect” network effects exist when users place greater value on a business as the number or usage of users of a *different* type increases. For example: consumers may value an operating system more highly as more developers sell applications for it; similarly, advertisers may value a search engine more highly as more consumers use it.

platform businesses to invest and compete aggressively to acquire scale. However, network effects are also relevant to the assessment of competitive concerns. For example, markets characterised by strong network effects may exhibit high concentration and allow firms to exercise market power, ie the ability to price<sup>8</sup> profitably above the competitive level. Network effects may also deter entry by increasing the number of users that an entrant must obtain in order to compete. Accordingly, network effects may make market power further entrenched. This may provide the ability and incentive for incumbents to suppress competitors that may achieve viable scale in the future.

- 3.6 Many digital businesses are “**multi-sided**,” in that they serve multiple distinct groups of users, with users in at least one of those groups valuing the platform more highly as the number or activity of users in at least one *other* group increases. For example, an app store may serve both consumers and app developers, with each group valuing increased participation by members of the other. When a business is multi-sided, the profit-maximising levels of price and output on one side of the platform may depend, in part, on competitive conditions on the other side. For example, some platform businesses may charge a zero or negative price to users on one side of the platform (eg consumers), relying on revenue from users on another side (eg advertisers) in order to maximise overall profitability.
- 3.7 In an increasing number of contexts, access to data is necessary for firms to compete and innovate. In digital markets, the competitiveness of firms often depends on timely access to relevant **data** and the ability to use that data to develop innovative applications, products, and services. When this important role of data is combined with other attributes, such as network effects and tipping, lack of access to data can prevent entry into core and complementary markets.
- 3.8 In summary, it is the very characteristics of digital markets responsible for their growth that pose unique challenges for competition authorities and governments, as described below. These characteristics tend to lead to the creation of firms with durable and entrenched market power, providing these firms with the ability and incentive to engage in exploitative and exclusionary conduct. Such conduct can lead to higher prices, reduced choice, quality, and innovation; limit access to markets for competitors; and impede effective

---

<sup>8</sup> The ability to raise and maintain prices is used as a shorthand for the various ways in which market power can be exercised.

consumer decision making. Furthermore, experience indicates that the largest and most profitable digital firms are able to target acquisitions of challenger firms to strengthen an already powerful position. The role of these firms as 'gateways' or essential trading partners also allows them to dictate the terms which users of the services must follow, generally with little scope for negotiation, allowing firms to define the nature of competition.

## **Challenges to existing competition approaches**

- 3.9 Weaker competition in digital markets can lead to challenges for competition enforcement and policy, including the following:
- (a) As set out above, market concentration and a lack of competition in digital markets allows firms to engage in practices that harm consumers, businesses, and society. The effects may be different from traditional price effects, and challenging conduct may require new theories of harm and new ways of demonstrating effects. Competition authorities are increasingly investigating harms or potential harms in a range of markets, in particular in digital advertising, app stores, and online marketplaces.
  - (b) The business models of firms operating in digital markets can be complex and multi-sided, and as set out above often involve reliance on data and may include zero price markets. Features such as the multi-sided nature of online platforms and the provision of services at zero monetary price can be difficult for courts and agencies to fit within traditional frameworks such as market definition. The scale and importance of data, the difficulty in understanding the operation of algorithms, and other complexities mean authorities may need new tools, capabilities, and approaches to investigate and understand anti-competitive behaviour in digital markets.
  - (c) Whilst competition authorities are active in tackling the market power of the most powerful digital firms, many of these investigations and associated remedial challenges have not sufficiently restored competition. This suggests the need for reforms to existing laws, and in some cases for new complementary regulation, to address competition concerns more effectively in digital markets.
  - (d) Finally, given the global nature of the largest digital firms, and the interaction between competition and wider policy areas like data protection, consumer protection, and media sustainability, there is an



increasing need for regulators and policy makers to work together across disciplines and jurisdictions.

## 4. Key Findings

- 4.1 This section provides an overview of the key findings from G7 and guest competition authorities' experience in addressing competition in digital markets. While each authority's contribution is included in the Appendix and should be considered in its entirety, this section highlights similarities and common themes across approaches. The findings are organised into sub-sections:
- 4.2 The first highlights the main issues competition authorities have been tackling in digital markets over the past several years through enforcement, studies, and advocacy, as well as merger control. Authorities have generally prioritised investigating anticompetitive behaviour in relation to platforms, in particular marketplaces and app stores, digital advertising, and algorithms. In the area of merger control, many of the enforcement actions involve concerns about nascent competitors or data aggregation.
- 4.3 The second explains how competition authorities are improving their ability to investigate, understand, analyse and remedy anticompetitive behaviour in digital markets such as by creating specialist departments and teams, upskilling staff, and undertaking in-depth market studies to build up knowledge of the markets. These approaches both improve understanding of the issues whilst also bolstering horizon scanning abilities to identify nascent harm.
- 4.4 The third highlights the plethora of activities related to legislative or regulatory reform, demonstrating the growing consensus that existing powers may need to be reformed for authorities to address the full scope of anticompetitive concerns in digital markets.
- 4.5 Finally, the fourth draws attention to the importance of regulatory cooperation both among domestic regulators working across disciplines but also internationally in helping authorities to tackle systemic and global competition concerns.

## Section A: Key issues in digital markets

### *Digital advertising*

4.6 Digital advertising is an area where competition authorities have been, and remain, particularly active, investigating and remedying anticompetitive conduct. For example:

- (a) In 2021, the Autorité de la concurrence (“the French competition authority” or “the Autorité”) accepted commitments from Google, stating Google will implement changes to the way it operates display advertising. This provided a quick and effective response to businesses harmed by Google practices.<sup>9</sup> In 2019, the Autorité’s Google Gibmedia case saw the agency impose a fine as well as a series of behavioural remedies to ensure Google clarify Google Ads’ operating rules and account suspension procedures.<sup>10</sup> The Autorité also reviewed upcoming changes to Apple iOS 14’s method of collecting users’ consent for their personal data, following up on a referral from several associations representing various players in the online advertising sector (media, internet networks, advertising agencies, technical intermediaries, publishers, mobile marketing agencies) who contested practices implemented by Apple.<sup>11</sup>
- (b) In 2019, the European Commission fined Google €1.49 billion for imposing restrictive clauses in contracts with third-party websites, which prevented Google’s rivals from placing their adverts on these websites.<sup>12</sup>
- (c) In 2020, the US Department of Justice’s Antitrust Division (“US DOJ”) sued Google, alleging that Google, in an attempt to maintain its monopoly in search and search advertising, had engaged in a series of anticompetitive conduct including for example, exclusionary agreements

---

<sup>9</sup>See the Autorité’s [Decision 21-D-11 of June 07, 2021](#) regarding practices implemented in the online advertising sector.

<sup>10</sup> See the Autorité’s [Decision 19-D-26 of December 19, 2019](#), regarding practices implemented in the online search advertising sector. in the sector of mobile applications advertising on iOS. In a separate context and case, Apple was fined it €1.1 billion for engaging in anticompetitive agreements within its distribution network and abusing a situation of economic dependency regarding its “premium” independent distributors. A summary can be found [here](#).

<sup>11</sup> See Autorité’s [Decision 21-D-07 of March 17, 2021](#)

<sup>12</sup> The European Commission 2019 decision on Google’s practices in online advertising can be found [here](#).



requiring Google as the default search engine and agreements prohibiting preinstallation of competitors' search engines.<sup>13</sup>

- (d) In early 2021, the UK's CMA opened an abuse of dominance case against Google in relation to its proposals to remove third party cookies and other functionalities from its Chrome browser, because of concerns the new framework could undermine the ability of other businesses to deliver adverts and affect the ability of publishers to earn revenue.
- (e) Canada's Competition Bureau ("the Canadian competition authority" or "CBC" or "the Bureau") is currently investigating whether Google has engaged in practices that harm competition in the online display advertising industry in Canada. In October 2021, the CBC obtained a court order for Google to produce records and written information that are relevant to the CBC's investigation.<sup>14</sup>

4.7 Competition authorities have also launched in-depth market studies to understand the structure and dynamics of the complex digital advertising market. For example:

- (a) In 2021, the Japan Fair Trade Commission ("Japanese competition authority" or "JFTC") published a report on digital advertising<sup>15</sup> which led to government level discussions on including digital advertising within the scope of Japan's Act on Improving Transparency and Fairness of Digital Platforms.
- (b) In 2019, the UK competition authority launched an Online Platforms and Digital Advertising market study, which conducted a detailed assessment of the market position of Google and Facebook in relation to digital advertising.<sup>16</sup>
- (c) The Australian Competition and Consumer Commission ("Australian competition authority" or "ACCC") recently completed an inquiry that focuses on the competitiveness and efficiency of the advertising technology supply chain. The inquiry was published on September 28<sup>th</sup>, 2021.<sup>17</sup>

---

<sup>13</sup> The US DoJ's 2020 decision on Google's practices search advertising can be found [here](#).

<sup>14</sup> The CBC's news release can be found [here](#)

<sup>15</sup> The JFTC's final report can be found [here](#).

<sup>16</sup> The CMA's final report can be found [here](#).

<sup>17</sup> The ACCC's Digital Advertising Services Inquiry can be found [here](#).

- (d) The German Bundeskartellamt (“German competition authority” or BKartA) launched a sector inquiry into market conditions in the online advertising sector in 2018, accompanied by a publication in its series of papers on “Competition and Consumer Protection in the Digital Economy”.<sup>18</sup>
- (e) The French competition authority conducted a sector-specific inquiry on data usage in the online advertising sector.<sup>19</sup>
- (f) In 2021, the FTC released a study of the data collection and use practices of major Internet Service Providers (ISPs), revealing that these firms collect and share far more data about their customers than many consumers may expect, including access to all of their Internet traffic and real-time location data.<sup>20</sup> The report found that even though several ISPs promised not to sell consumers’ personal data, they allow it to be used, transferred, and monetised by others and hide disclosures about such practices in the fine print of their privacy policies.

### ***The role of algorithms***

4.8 G7 and guest competition authorities are working to better understand the mechanics of algorithms and their potential adverse effects on competition. Approaches include:

- (a) Producing internal research like the Australian competition authority’s work on the impacts of pricing algorithms on competition and fair trading (used in a fair trading case involving the travel platform ‘Trivago’);
- (b) Producing reports such as the joint report by the German competition authority and the French competition authority in 2019,<sup>21</sup> and the UK CMA’s report on algorithms in 2020;<sup>22</sup>
- (c) Convening study groups like the Autorità Garante del la Concorrenza e del Mercato (“Italian competition authority” or “AGCM”) and the Japanese competition authority (“Japanese Fair Trade Commission” or “JFTC”); or

---

<sup>18</sup> The Bundeskartellamt’s publication can be found [here](#).

<sup>19</sup> The sector inquiry regarding data usage in the online advertising sector can be found [here](#)

<sup>20</sup> The FTC’s final report can be found [here](#).

<sup>21</sup> The joint report is published [here](#).

<sup>22</sup> The CMA’s report can be found [here](#).

(d) Holding hearings like the US Federal Trade Commission (“US FTC”).

4.9 Through this work, competition authorities are increasing their understanding of how algorithms can affect competition and harm consumers. Many of these initiatives have involved the specialist knowledge of in-house data scientists or contributions from external experts.

4.10 In addition to this research and knowledge building, some authorities have taken enforcement action in relation to cases involving algorithms. The US DOJ, Korea Fair Trade Commission (“Korean competition authority” or “KFTC”) and UK CMA have all sought to correct the anticompetitive effects of algorithms:

(a) In 2015, the US DOJ charged two executives of an ecommerce retailer with using specific pricing algorithms to fix the price of certain goods sold on Amazon’s Marketplace.<sup>23</sup>

(b) The UK CMA took action in a similar case in relation to a price-fixing agreement where two Amazon marketplace sellers had agreed not to undercut each other’s prices and used automated pricing software to affect their agreement.<sup>24</sup>

(c) More recently, the KFTC imposed corrective measures as well as a fine against platforms for self-preferencing their own products by manipulating the search algorithm.

### ***Marketplaces and app stores***

4.11 G7 and guest competition authorities are also increasingly active in addressing a range of potential anticompetitive conduct in relation to online marketplaces and app stores. This includes self-preferencing, price parity clauses, and restrictive terms of business between sellers and platforms. For example:

(a) The Italian competition authority and the European Commission have both investigated whether Amazon preferences vendors who use Amazon services over third party services.<sup>25</sup>

---

<sup>23</sup> A summary can be found [here](#).

<sup>24</sup> Further detail can be found on the CMA’s case page [here](#).

<sup>25</sup> A summary of the investigations can be found [here](#) and [here](#)

- (b) The Japanese competition authority approved a commitment plan submitted by Amazon Japan to address a variety of practices conducted by Amazon Japan that negatively affected sellers on its platform.<sup>26</sup>
- (c) The Canadian competition authority has an ongoing civil investigation into Amazon's potential restrictive trade practices.<sup>27</sup>
- (d) In Germany, action from the German competition authority led to Amazon amending its terms of business for sellers on marketplaces worldwide after the agency deemed them to be abusive.<sup>28</sup>
- (e) In 2012, the US DOJ sued Apple for colluding with other publishers to end e-book retailers' freedom to compete on price.<sup>29</sup>
- (f) The Competition Commission of India ("Indian competition authority" or "CCI") is investigating whether Amazon and Flipkart's vertical arrangements with their respective 'preferred sellers' may have foreclosed other non-preferred traders or sellers from accessing these online marketplaces.

4.12 Mobile app stores have also been subject to a continuing high level of attention. For example:

- (a) The European Commission has opened an investigation to assess whether Apple's rules for app developers on app distribution violate EU competition laws.<sup>30</sup>
- (b) The UK competition authority has opened an investigation into the terms and conditions governing app developers' access to Apple's AppStore and also launched a market study into whether Google and Apple's powerful position in relation to the supply of app stores, among other services, is resulting in harm to consumers.<sup>31</sup>
- (c) In May 2021, the Italian competition authority imposed a fine of over €100 million to Google for refusing to include a rival app in its Android Auto

---

<sup>26</sup> The press release relating to the approval of the commitment plan can be found [here](#).

<sup>27</sup> The CBC sought information from market participants in August 2020, see [here](#)

<sup>28</sup> The case summary is published [here](#)

<sup>29</sup> The settlement is published [here](#)

<sup>30</sup> The Commission's investigation is summarised [here](#)

<sup>31</sup> A summary can be found on the CMA's case page [here](#)



system that provides services related to the recharging of electric vehicles.

- (d) The Australian competition authority states that it is proactively monitoring and investigating allegations of potentially anticompetitive conduct, including self-preferencing in relation to app stores.
- (e) The Japanese competition authority has investigated Apple's conduct regarding the operation of App Store and announced the closing of the antitrust case in September 2021. Following the process of the investigation, Apple proposed to take measures to allow external links to be displayed on reader apps such as music streaming, e-book distribution, and video streaming etc.<sup>32</sup> In addition, the JFTC recently launched a fact-finding survey on mobile OS and mobile app distribution.
- (f) A recent Executive Order in the US has asked the US DOJ, the US FTC, and Department of Commerce to study and report on mobile app ecosystems.<sup>33</sup>

## **Mergers**

- 4.13 Merger activity plays an important role in the growth of digital markets. The removal of potential competitors or the acquisition of existing competitors or suppliers can lead to a reduction in competition and innovation, and fewer choices or higher prices for consumers, and acquisitions can be used by digital firms to reinforce an existing strong position or extend that position into other markets.
- 4.14 There are widely held concerns about historic underenforcement against digital mergers. However, in recent years competition authorities have become more active in challenging, blocking, and remedying proposed mergers in digital markets.
- 4.15 Many authorities have challenged transactions in relation to concerns regarding the acquisition of nascent or potential competitors, including acquisitions of emerging digital competitors by traditional bricks and mortar firms. For example, the US FTC challenged Nielsen/Arbitron, CDK/AutoMate,

---

<sup>32</sup> Press release relating to closing the investigation against Apple can be found [here](#).

<sup>33</sup> The Executive Order, published in 2021, can be found [here](#).

and Edgewell/Harrys,<sup>34</sup> among others. In addition, the US DOJ challenged Visa/Plaid based on these concerns.<sup>35</sup> Lastly, the UK CMA has conducted in-depth reviews of PayPal's acquisition of iZettle, ultimately clearing the deal in 2019, and Experian's acquisition of ClearScore, which was abandoned before publication of the final report.<sup>36</sup>

- 4.16 Another common theme is mergers involving data aggregation that risks entrenching market power. The European Commission reviewed and required interoperability remedies in Microsoft/LinkedIn and Google/Fitbit to address concerns that the merged entity would be able to use data to prohibit entry or otherwise entrench market power,<sup>37</sup> and the US FTC challenged Verisk/Eagleview on a similar theory.<sup>38</sup> The Japanese competition authority also reviewed Google/Fitbit, clearing it based on the parties' commitment to behavioural remedies that maintains interoperability and data separation.<sup>39</sup>
- 4.17 Lastly, there have been a number of vertical or horizontal mergers involving software, including in important consumer facing industries. For example, the US DOJ challenged H&R Block/TaxACT (tax preparation software),<sup>40</sup> the US FTC challenged CoStar/RentPath,<sup>41</sup> and the UK CMA blocked Sabre/Farelogix (software used in the airline industry).<sup>42</sup> Furthermore, the Canadian competition authority required commitments in Thoma Bravo/Acuerna (software used by the oil and gas industry).<sup>43</sup> Many such challenges involved both price and non-price concerns, such as reduced innovation or quality.

---

<sup>34</sup> The summaries can be found on the US FTC's web page: [Nielsen/Arbitron](#), [CDK/AutoMate](#), and [Edgewell/Harrys](#).

<sup>35</sup> The summaries can be found on the US DOJ's web page: [Visa/Plaid](#) and [Bazaarvoice/Power Reviews](#).

<sup>36</sup> The summaries can be found on the CMA's case page: [PayPal/iZettle](#) and [Experian/Clearscore](#).

<sup>37</sup> The Commission Decisions can be found here: [Microsoft/LinkedIn](#) and [Google/Fitbit](#). In [Google/Fitbit](#), the Commission also required a data silo commitment to ensure that Fitbit's user data will be separate from any other Google data that is used for advertising.

<sup>38</sup> The US FTC's case summary is [here](#).

<sup>39</sup> The findings from the JFTC's review can be found [here](#).

<sup>40</sup> The US DOJ case page can be found [here](#)

<sup>41</sup> The FTC's case summer is [here](#).

<sup>42</sup> CMA case page can be found [here](#).

<sup>43</sup> The CBC's statement regarding this merger can be found [here](#)

## **Section B: Strengthening competition authorities**

### ***Strengthening institutional capacity***

- 4.18 The complexity of technologies powering digital markets and the large amounts of data this produces has meant G7 and guest competition authorities have sought to modernise the tools and approaches needed to understand and investigate anti-competitive behaviour in digital markets.
- 4.19 With the important role data plays in the business models of digital firms, authorities are now having to analyse significant amounts of complex information. As highlighted by the responses, many competition authorities have taken significant steps to increase their capacity and ability to analyse new and complex information, investing resources into a wide range of areas, from establishing dedicated units and upskilling inhouse, to creating internal working groups and working with external experts.
- 4.20 Given the technical complexities of the issues, several competition authorities have established new units, teams or departments comprising of technical specialists such as data engineers, data scientists, digital forensics and behavioural scientists. These specialists work collaboratively with economists, lawyers and policy professionals either within the new units or across authorities, providing analytical and data management expertise to help deliver complex cases more effectively. For example, in 2019, the German competition authority restructured its Policy division to create a Digital Economy Unit to further support the agency on data related issues, while specialist data analysis also remains in the Chief Economist Team and the IT Forensic Unit. In January 2020, the French competition authority established a dedicated Digital Economy Unit. Similarly, the UK competition authority established the Data, Technology and Analytics (DaTA) Unit and the Australian competition authority established the Strategic Data Analysis Unit (SDAU).
- 4.21 The US FTC recently added a Chief Technologist and other technology specialists to advise the Chair and Commission on technology matters. The Canadian competition authority created the new position of Chief Digital Enforcement Officer to help enhance its digital enforcement capacity by modernising intelligence gathering capabilities. In addition, with an increase in budget from 2021 onwards, the Canadian competition authority is establishing a Digital Enforcement and Intelligence Branch, as other authorities have done.

- 4.22 Not only have specialised staff or departments played an important role in the analysis of data on ongoing cases, but they have also increased the ability of authorities to proactively monitor and detect competition issues in digital markets. For example, the Australian competition authority's SDAU conducted research into the effects of pricing algorithms on competition and developed in-house web-scraping capabilities and a tool to detect potential bid-rigging in procurement data. The French competition authority's Digital Economy Unit has set up an automatic Terms of Services tracking tool that lists the Terms of Services and similar documents of various digital services available online and allows users to track their modifications.

### ***Building institutional knowledge***

- 4.23 Digital markets are constantly evolving and in some cases the issues presented are novel, meaning there is a lack of case law and precedent to follow. These novel issues require new methods of analysis, ways of approaching them and an increase in institutional knowledge. Competition authorities are responding to these needs in various ways by conducting market studies and fact-finding surveys to better understand the markets, upskilling staff, accessing specialist advice from external experts and building in-house knowledge through internal development programmes. Seen as a whole, these approaches help ensure that competition authorities are equipped to understand and address issues as they arise.
- 4.24 The past several years has seen authorities conduct investigations of whole markets to better understand the complex business models involved and their effects on competition, taking advantage of market studies and fact-finding tools. For example:
- (a) In May 2016, the French and German competition authorities published a joint conceptual study into data and its implications for competition law.<sup>44</sup>
  - (b) The Japanese competition authority has also conducted a series of fact-finding surveys and published reports on business-to-business transactions in online retail platforms, app stores<sup>45</sup> and on digital

---

<sup>44</sup> The joint report is published [here](#)

<sup>45</sup> Link to report on Business-to-Business transactions on online retail platform and app store can be found [here](#).

advertising<sup>46</sup> and has begun fact-finding surveys on cloud services and on mobile OS (operating systems) and mobile app distribution.

- (c) In 2020, the European Commission launched a sector inquiry into the Internet of Things (“IoT”) for consumer-related products and services in the European Union. A preliminary report on the findings was published in 2021.<sup>47</sup>

- 4.25 In addition to improving institutional understanding of market dynamics, market wide studies and inquiries have often led to concrete recommendations on how to improve monitoring and regulatory control of digital markets. The Australian competition authority conducted an 18-month Digital Platforms Inquiry,<sup>48</sup> considering the market power and the impact of search engines, social media and news aggregators on media, advertisers and consumers. The Inquiry made 23 recommendations, which included the establishment of a permanent Digital Platforms Branch at the ACCC to continue providing close scrutiny of digital markets by producing 6-monthly reports on a range of markets. This branch has now been established. Similarly, a key output of the UK CMA’s online platform and digital advertising market study was the recommendation to the UK Government that a new pro-competition regulatory regime is needed to govern the behaviour of platforms funded by digital advertising. The UK government opened a period of consultation on the regime between 20 July to 1<sup>st</sup> October 2021.
- 4.26 Competition authorities are investing in the upskilling of current staff to help develop their understanding of the issues and how the use of new technologies could affect competition. In 2020, the US DOJ launched an initiative to allow attorneys and economists to take advantage of online academic coursework offered by the MIT Sloan School of Management in blockchain, AI, and machine learning. The Competition Commission South Africa (“South African competition authority” or “CCSA”) has created a programme focusing on internal skills development specifically focused on enforcement.
- 4.27 Competition authorities are also focused on building institutional knowledge by engaging with external and technical experts:

---

<sup>46</sup> Final report regarding digital advertising can be found [here](#).

<sup>47</sup> The European Commission’s preliminary report can be found [here](#).

<sup>48</sup> The Digital Platform Inquiry is published [here](#)

- (a) The US DOJ routinely invites public speakers and academics to present their work on competition law and has hosted public workshops; one in 2019 which focused on the dynamics of media advertising and the implications for antitrust enforcement, and another in 2020 which focused on venture capital, highlighting what antitrust enforcers can learn about how to identify nascent competitors.
- (b) The Japanese competition authority has been actively collaborating with external experts in the digital field, whilst the Korean competition authority has signed an MoU with research institutions and universities.
- (c) The South African competition authority is considering the establishment of an external panel of advisors to be drawn from tech companies, venture capitalists and business school academics to provide the CCSA with specialist knowledge and support on cases.
- (d) In 2019, the European Commission commissioned three external special advisers to prepare a report on Competition Policy for the Digital Era.<sup>49</sup>

4.28 These initiatives will help guarantee that authorities have a solid and evolving understanding of digital markets, ensuring the continuation of quality interventions and enforcement decisions. Additionally, in the long-term, these changes contribute to strengthening the monitoring and evaluation of remedies and measures implemented by competition authorities.

## **Section C: Reforms to existing powers and approaches**

4.29 Nearly all the contributors to this compendium indicated that reforms to address competition concerns in digital markets were enacted or underway in their jurisdictions. Despite the considerable enforcement and policy work of competition authorities described above and in the individual contributions, there is growing consensus that additional mechanisms, powers, or safeguards are necessary and existing approaches should be modernised or strengthened to address the specific attributes of digital markets. While the reforms and reform proposals vary in content and scope, most facilitate easier or faster agency intervention or contemplate new regulatory regimes.

---

<sup>49</sup> Published in April 2019, the EU Special Adviser's Report on Competition Policy for the Digital Era can be found [here](#).

4.30 These proposals have been informed by key government and academic reports which have helped to build the evidence base and to further the global debate on these issues. Notable reports include: the Report of the Digital Competition Expert Panel in the UK,<sup>50</sup> the Stigler Committee on Digital Platforms and the Judiciary Antitrust Subcommittee's Investigation of Competition in Digital Markets in the US,<sup>51,52</sup> the Consultation on the Digital Services Act package<sup>53</sup> and the report by the German Commission 'Competition Law 4.0',<sup>54</sup> in addition to significant analysis in competition authorities' market studies.

### ***Reforms to antitrust and new regulatory regimes***

4.31 Whilst many of the reforms are more recent and ongoing, some agencies have been engaged in legislative and policy reforms for years. The Bundeskartellamt, for example, brought in changes to their national competition law in 2017 with the 9<sup>th</sup> amendment which added provisions pertaining to the digital economy. This experience helped demonstrate the benefits of new approaches in addressing issues in digital markets and supported the case for further amendments to competition law.

4.32 Nearly all contributions indicated that timely intervention and the ability to address harm in its incipiency are required to make markets more competitive and to drive innovation, whether that be through regulation, legislation, or wider reforms. Selected proposed reforms include:

(a) The European Commission's **Digital Markets Act** seeks to prevent negative consequences arising from platforms acting as digital "gatekeepers". This *ex ante* regulation includes both prohibitions against unfair conduct and affirmative obligations to promote well-functioning markets.<sup>55</sup>

(b) The 10th Amendment to the **German Act against Restraints of Competition** (or GWB) entered into force in early 2021 which allows the Bundeskartellamt to intervene at an early stage, faster, and more

---

<sup>50</sup> Published in March 2019, the Report of the Digital Competition Expert Panel can be found [here](#).

<sup>51</sup> Published in September 2019, the Stigler Committee on Digital Platforms report can be found here can be found [here](#).

<sup>52</sup> Published in October 2020, the US Subcommittee on Antitrust's Investigation of Competition in Digital Markets can be found here can be found [here](#).

<sup>53</sup> Consultation on the Digital Services Act package conducted from June to September 2020 can be found [here](#):

<sup>54</sup> Published in September 2019, the Report by the Commission 'Competition Law 4.0' can be found [here](#).

<sup>55</sup> The proposals can be found [here](#).



effectively, in cases of certain conduct by companies which are of paramount significance for competition across markets.<sup>56</sup>

- (c) In Japan, the enactment of the **Act on Improving Transparency and Fairness of Digital Platforms** allows certain powerful digital platforms to be designated as “specified digital platform providers” and become subject to specific regulations aimed at increasing transparency and fairness in markets such as online retail marketplaces and app stores.<sup>57</sup>
- (d) The **UK Government is consulting on a new pro-competition and pro-innovation regulatory regime** for the most powerful digital firms, those designated as having ‘strategic market status.’ These firms would be required to comply with an enforceable code of conduct to prevent them from taking advantage of their powerful position and may be subject to pro-competitive interventions like interoperability to open-up markets and create more opportunities for competition and innovation to flourish. Mergers and acquisitions involving these firms would also be subject to closer scrutiny.
- (e) The committees in the US legislature have proposed bills to address competition concerns in digital markets. For example, **the House Judiciary Committee (HJC) has proposed four bills** in response to their recently concluded multi-year investigation into competition in digital markets. The United States Congress is currently considering these and other bills which range from broad-based antitrust reforms to narrowly targeted bills that would create exemptions or obligations for a small number of firms.<sup>58</sup> Also, in July 2021, President Biden issued **an Executive Order on Promoting Competition** in the American Economy, emphasising the priority to promote fair, open, and competitive markets, with a focus on digital markets.<sup>59</sup>
- (f) In 2020, the French competition authority published a **position paper on competition policy and digital challenges** proposing ways to tackle the challenges including supplementing competition law at national or European level with a mechanism that would allow quick intervention

---

<sup>56</sup> The amendments can be found [here](#).

<sup>57</sup> Further detail is available [here](#).

<sup>58</sup> The Bills can be found here; [American Choice and Innovation Online Act](#), [ACCESS Act of 2021](#), [Platform Competition and Opportunity Act of 2021](#), [Open App Markets Act](#).

<sup>59</sup> The Executive Order, published in 2021, can be found [here](#).

when harmful conduct occurs by ‘structuring’ operators ie identified platforms.<sup>60</sup>

(g) The Italian competition authority **has advocated for new legislation to regulate digital gatekeepers** allowing them to intervene more swiftly when certain black-listed conducts are implemented.

- 4.33 In addition to these wide sweeping reform proposals, many agencies have introduced plans to change procedures and institutional arrangements to allow the authority to act faster. This includes using interim measures to prevent further harm, and improving the authority’s ability to access information to better understand and analyse issues. Some jurisdictions that have not proposed reforms have identified that they are also facing similar challenges and will reflect on the experiences and learnings in other jurisdictions to determine whether similar reforms would be appropriate.
- 4.34 There are also proposals for reforms in relation to specific markets, for example online marketplaces, ecommerce and media sustainability. For instance, in Korea the competition authority has proposed the "Act on Fair Intermediate Transactions on Online Platforms" to promote transparency and fairness of transactions in online platforms as well as mutually beneficial cooperation between platforms and online stores. The Japanese competition authority published a report regarding trade practices in relation to business-to-business transactions on online retail platforms and app stores which contributed to the planning process for the enactment of “the Act on Improving Transparency and Fairness of Digital Platforms.”

### ***New approaches in merger control and reforms***

- 4.35 Reforms are also being taken forward in relation to merger control. In many jurisdictions, governments and agencies have proposed or introduced reforms to enhance jurisdiction over mergers in digital markets. Many competition agencies have notification thresholds that are coterminous with jurisdiction and based on the turnover of at least two parties to a transaction. In digital markets, often one party has low or no turnover, and thus agencies may lack jurisdiction to review and address these mergers. Reforms include:

---

<sup>60</sup> The Autorité’s Contribution to the Debate on Competition Policy and Digital Challenges can be found [here](#).



- (a) Germany introduced new legislation to review transactions based on transaction value.
- (b) The European Commission announced in its guidance on Article 22 of EU merger regulation that it will no longer discourage referrals from EU Members States for transactions falling outside the referring Member State's national merger control thresholds.<sup>61 62 63</sup>
- (c) The JFTC declared its intention to actively review non-notifiable transactions in its revised Policies Concerning Procedures of Review of Business Combination, although it is generally possible for the JFTC to review transactions that do not meet the notification thresholds.
- (d) In South Africa, the recent amendments to the Competition Act provide scope for the CCSA to request the notification of mergers that lie below the standard threshold.
- (e) The US FTC published a study of 616 non-notified acquisitions by six large tech firms, analysing the terms, scope, structure and purpose of the acquisitions that did not receive pre-merger review.<sup>64</sup>

4.36 There are also examples of merger reforms which go beyond jurisdiction. For example, in the UK the advice of the Digital Markets Taskforce included a recommendation that the CMA would oversee a bespoke merger regime allowing for greater scrutiny of mergers involving a subset of the largest digital firms. The UK Government is now consulting on this proposal. In addition, two of the US HJC bills propose a steep hurdle for the covered platforms to engage in acquisitions.

4.37 Other competition authorities are advocating for proposed changes to merger control, which go beyond just digital firms. For example, in Italy the AGCM is calling for a harmonisation of merger control with EU law, with respect, among others, to the substantive test, replacing the dominance test with one based on a significant impediment to effective competition, and the role of efficiencies, including an explicit reference to them in the weighing with the

---

<sup>61</sup> Commission Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases, [here](#).

<sup>62</sup> In addition, the proposed Digital Markets Act would require designated gatekeepers to inform the European Commission of planned acquisitions or mergers.

<sup>63</sup> France, having advocated for the use of Article 22, were the first authority to refer an acquisition that fell below national transaction thresholds to the European Commission which led to a phase 2 examination of the transaction.

<sup>64</sup> The US FTC's report can be found [here](#).

anti-competitive effects. Reforms to facilitate competition authorities' ability to prevent anticompetitive mergers are under consideration in Australia.<sup>65</sup>

- 4.38 These ongoing changes and proposals highlight the importance of policymakers engaging with competition authorities to ensure their tools remain fit-for-purpose, enabling them to continue to take action such that digital markets work for consumers, businesses, and benefit society.

## **Section D: The importance of regulatory cooperation**

- 4.39 Competition issues rarely occur in a vacuum and many of the issues highlighted are inextricably linked with other policy areas. This crossover consistently appears in the work of G7 and guest competition agencies in areas such as data privacy and protection, consumer protection, and media sustainability where agencies are working closely with other government departments and regulators to tackle complex issues involving competition in holistic ways.

### ***The links between data protection, privacy, consumers, and competition***

- 4.40 The use of data is core to many digital platform business models, whose services are often offered 'for free' in exchange for consumer's data. Access to large datasets can contribute to a platform's strong market position which can be leveraged to collect more data to better target consumers and develop products and services. This cycle can make it difficult for new entrants and innovative challengers to compete. Competition agencies are therefore regularly considering how the ways in which platforms collect consumer data affect markets. This increasingly involves working closely with data protection and consumer enforcement authorities.
- 4.41 A number of competition and consumer agencies have used consumer protection tools to address harmful behaviour relating to the gathering of consumer data. For example:
- (a) In 2019, in Australia the ACCC took action against Google for alleging it misled consumers about the personal location data it collects and uses from Android mobile devices.<sup>66</sup>

---

<sup>65</sup> Protecting and promoting competition in Australia – [Speech transcript](#).

<sup>66</sup> A summary is published [here](#).



- (b) In Italy, the AGCM fined WhatsApp in 2017 and Facebook in 2018 using its consumer protection powers, for aggressive practices related to the collection and use of consumers data.<sup>67</sup>
- (c) The CBC reached a settlement with Facebook that included a CA\$9 million fine regarding the false or misleading claims about the privacy of Canadians' personal information online.<sup>68</sup>
- (d) In India, the CCI is investigating the updated privacy policy and terms of service by WhatsApp whereby the users have to accept the unilaterally dictated "take it or leave it" terms in their entirety.
- (e) In Germany, the Bundeskartellamt imposed extensive restrictions on Facebook regarding the processing of user data.<sup>69</sup> The Bundeskartellamt found that Facebook's terms of service and the manner and extent to which it collects and uses data amount to an exploitative abuse of dominance. The Bundeskartellamt worked closely with Germany's data protection authorities to clarify the data protection issues involved when assessing Facebook's behaviour under its national competition law.

4.42 Outside of enforcement, several agencies have taken an in depth look at the synergies and tensions that arise when competition intersects with data protection, privacy, and consumer protection through studies, reports and collaborative work. This includes:

- (a) The Japanese competition authority published Guidelines concerning abuse of superior bargaining position to increase transparency around data collection and the transactions between platforms and consumers providing personal information.<sup>70</sup>
- (b) Similarly, in Italy, the AGCM worked with Italy's Communication Regulator and the Data Protection Authority to publish a report in 2020 which included recommendations to government and parliament outlining a framework addressing the issues raised by big data.<sup>71</sup> The three authorities advocated for the establishment of a coherent and consistent framework on data collection and utilisation, which enhances

---

<sup>67</sup> A summary is published [here](#).

<sup>68</sup> A summary is published [here](#)

<sup>69</sup> The BKartA's summary can be found [here](#).

<sup>70</sup> Further detail is available [here](#)

<sup>71</sup> A summary of the report is available [here](#)



transparency by reducing information asymmetries and facilitates data portability through the adoption of open and interoperable standards.

- (c) In the UK, the CMA published a joint statement with the Information Commissioner's Office (ICO), the UK's data protection authority, underlining the strong synergies that exist between the aims of competition and data protection and how the regulators can work collaboratively to overcome any perceived tensions in their objectives.<sup>72</sup>

### ***Impact on media***

4.43 More recently there have also been examples of competition concerns having an impact on the sustainability of the media. Some agencies have taken action to address the competition concerns. These include:

- (a) In Australia, the News Media Bargaining Code was passed into legislation in February 2021.<sup>73</sup> The code is designed to address the significant bargaining power imbalance between major digital platforms and Australian news businesses. Although compliance with the code is not yet mandatory for digital platforms, numerous voluntary negotiations have already resulted in commercial agreements between the platforms and publishers.
- (b) Similarly, in France, the Autorité imposed interim measures to order Google to negotiate with publishers and press agencies regarding the remuneration due to them and their related rights.
- (c) Japan's competition authority also made clear that platforms need to be more transparent with publishers about their remuneration.<sup>74</sup>
- (d) Finally, highlighting the pace of change in digital markets, the German competition authority is currently examining the recently launched Google News Showcase service, including whether the contractual terms offered are to the detriment of publishers.<sup>75</sup> This was initiated in June 2021.

---

<sup>72</sup> The statement is published [here](#)

<sup>73</sup> Parliament of Australia, [Treasury Laws Amendment \(News media and digital platforms mandatory bargaining code\) Bill 2021](#), 25 February 2021

<sup>74</sup> See the *Autorité's* [Décision 20-MC-01 of 09 April 2021](#) on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others and Agence France-Presse.

<sup>75</sup> A summary is available [here](#).

## ***Domestic and international collaboration with non-competition authorities***

### *Domestic collaboration*

- 4.44 G7 and guest competition authorities are engaging regularly with other domestic regulators and policymakers to address issues in digital markets in a holistic way. For example, the French commercial code ensures that the Autorité must communicate to every independent regulatory authority all proceedings that are initiated which relate to sectors that fall within their area of expertise. In a referral from several associations representing the online advertising sector that contested practices implemented by Apple (the introduction of App Tracking Transparency (ATT) for applications on iOS), the Autorité solicited and received an opinion from the data protection agency (CNIL) on the measures implemented by Apple that offered users a reinforced framework of consent for the use of their personal data.<sup>76</sup>
- 4.45 The Canadian competition authority highlights that it cooperates with domestic law enforcement partners in its case work and provides competition-related input to regulators and policymakers at all levels of government in the context of its advocacy work. In Australia, the ACCC regularly engages with other government agencies through formal Memorandums of Understanding (MoUs) allowing improved information sharing.
- 4.46 Competition authorities are also building new structures to ensure ongoing collaboration and cooperation. For example, in 2019 the CMA launched the Digital Regulation Cooperation Forum (DRCF), alongside Ofcom, the communications regulator responsible for the UK's new regime for online harms, the Information Commissioner's Office (ICO) and the Financial Conduct Authority (FCA), to improve coordination and cooperation between regulators in digital markets.<sup>77</sup> The KFTC is cooperating with relevant ministries to develop a comprehensive, pan-governmental measure to address issues related to data and AI. The recent US Executive Order specifically directs the US DOJ and US FTC to work with other federal agencies to adopt a whole-of-government approach to address overconcentration, monopolisation, and unfair competition in the American economy, including in digital markets. The CCSA are also currently exploring its working arrangements with the newly formed Information Regulator of

---

<sup>76</sup> See Autorité's [Decision 21-D-07 of March 17, 2021](#) in the sector of mobile applications advertising on iOS.

<sup>77</sup> Further information is available on the DRCF's webpage [here](#).

South Africa to determine where each regulator can be most effective, in particular concerning the monitoring of the new Protection of Personal Information Act (POPIA).

- 4.47 Another area where authorities are also cooperating closely is fintech. With the growth of the sector and the increasing involvement of digital firms in financial markets there has been a clear effort by authorities and governments to better understand these markets and build closer relationships. For example, the CCSA forms part of the Open Finance Inter-governmental Fintech Working Group (IFWG) comprising of other regulators and departments. Established in 2016, the aim is to understand the growing role of fintech firms and innovation in the South African financial sector and explore how regulators can proactively assess emerging risks and opportunities. Elsewhere, the CBC is building on their market study on fintech, working with regulators and policy makers across Canada to recommend changes to make banking more convenient through fintech and open banking. Similarly, the French competition authority conducted a sector-specific inquiry on the level of competition in new technologies applied to financial activities.

#### *International collaboration*

- 4.48 As well as the increasing collaboration domestically, international collaboration between competition authorities is now more important than ever. Competition authorities deal with global digital firms who operate in 'borderless markets' and therefore face similar challenges. Furthermore, there is a need to understand the different approaches being taken to avoid creating a fragmented regulatory landscape. Collaboration provides a powerful opportunity to share learning and experiences in addressing similar issues.
- 4.49 G7 and guest authorities continue to work together directly, sharing information, case theories, best practice and in some cases even producing joint outputs. The JFTC and US DOJ highlight the importance of regular discussions with other regulators to solicit different opinions and help formulate and inform domestic views on competition matters. In terms of joint work, in 2019, the German and French competition authorities produced a report on algorithms, described above, and the CCSA is specifically considering making use of the existing MoUs with other African authorities to further help in dealing with issues relating to digital markets.
- 4.50 Authorities also continue to work together through existing international competition and consumer networks such as the Organisation for Economic



Cooperation and Development (OECD), the International Competition Network (ICN) and the International Consumer Protection Enforcement Network (ICPEN).

- (a) The ICN, a group of 140 of the world's competition agencies, has addressed key digital issues in recent years, such as developing normative guidance on assessing dominance in digital markets, and has also focused resources on multi-disciplinary issues such as its new multiyear project on the intersection of competition, consumer, and privacy which is coordinated by the competition authorities of Australia, Canada, USA and Italy. It has also increased its coordination and focus on digital matters through the creation of the role of ICN Vice Chair Digital Coordination and Asia Pacific Liaison.
- (b) The OECD's Competition Committee has held best practice roundtables on a host of digital topics such as competition economics of digital ecosystems and abuse of dominance in digital markets. It has also addressed interdisciplinary issues such as competition enforcement and regulatory alternatives, which included discussions of the interplay with other regulations, and topics such as digital advertising, which necessarily includes considerations of consumer and privacy issues. The OECD has also developed consensus prescriptive documents ("Council Recommendations") that inform competition authority approaches, including in digital markets work, and enhancing agency cooperation, this also includes considering legal models that could support enforcement cooperation in the digital era. The OECD is continuing its work in this area.
- (c) Several of the G7 and guest authorities are also active in ICPEN, working collaboratively with other members on joint projects to remedy harms experienced by consumers globally. Whilst the network considers issues in all markets, over the past few years ICPEN work has increasingly considered harm to consumers in digital markets, focusing on online reviews and endorsements, reducing harm to children due to marketing in online games and improving the transparency of business' terms and conditions online.

4.51 Collaboration and cooperation between competition authorities, regulators, international networks, law makers, governments, and industry experts will better allow authorities to keep up with the pace of change, understand new



business models and emerging issues, and work towards coherence that spurs innovation and benefits society.

## 5. Conclusions and next steps

- 5.1 Competition authorities are dedicating a vast amount of activity to digital markets, and there is a high level of commonality in the approaches that authorities are taking to address competition concerns. Most agencies have opened investigations, conducted studies, or brought enforcement actions to address concerns about the exercise of market power of platforms.
- 5.2 In grappling with these complex issues authorities are actively looking to strengthen institutional capability and build knowledge to ensure they are equipped to address the specific challenges of digital markets, developing skills and building teams with backgrounds in areas such as engineering and data science. Furthermore, new relationships are being cultivated with other regulators, and with technical experts, to understand a range of complex issues.
- 5.3 Many authorities are considering, or have introduced, different reforms to address competition issues in digital markets. Recognising that the current tools may, in some jurisdictions, be insufficient, authorities and legislatures are developing solutions either to bolster enforcement tools, merger assessments, or to introduce regulation.
- 5.4 These approaches are being driven by global challenges, with global firms operating across borders and jurisdictions in digital markets. This underlines the importance of collaboration between competition agencies, as well as other regulators and governments in addressing the challenges posed. The development of the compendium is an example of the valuable output of collaborative work and highlights competition authorities' commitment to continue strengthening the ways we work together directly, sharing information, case theories, best practice and in some cases even producing joint outputs.
- 5.5 The following section includes the submissions from each of the competition authorities that contributed to the compendium.

## 6. Submissions

### Canada - Competition Bureau Canada

The Competition Bureau's (CBC) vision is to be a world-leading competition agency, one that is at the forefront of the digital economy and champions a culture of competition for Canada.

***Whether you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

#### *Enforcement*

The Competition Bureau is focused on safeguarding and promoting competitive markets in the digital economy. Our enforcement actions demonstrate this focus.

#### *Abuse of Dominance*

The Bureau proactively seeks information from market participants about potentially anti-competitive conduct in digital markets.

(a) In 2019, the Bureau issued a call-out to market participants for information to inform potential investigations into anti-competitive conduct by firms in digital markets.<sup>78</sup> We heard concerns from a wide range of stakeholders and received meaningful submissions from businesses that compete in the digital economy, industry and trade associations and Canadian consumers. This exercise identified specific issues that are relevant to current enforcement considerations.

(b) Last year, the Bureau invited market participants to provide input to help inform its ongoing civil investigation into conduct by Amazon, on its Canadian marketplace (Amazon.ca).<sup>79</sup> This investigation under the restrictive trade practices provision of the Competition Act is ongoing.

---

<sup>78</sup> [Competition Bureau call-out to market participants for information on potentially anti-competitive conduct in the digital economy - Competition Bureau Canada.](#)

<sup>79</sup> [Competition Bureau seeks input from market participants to inform an ongoing investigation of Amazon - Canada.ca.](#)



The Bureau also concluded an abuse of dominance investigation into Softvoyage, a firm that provides access to vacation packages.<sup>80</sup> centred around third-party access to data in Softvoyage’s software. As part of the consent agreement, Softvoyage will not enforce several types of exclusionary and restrictive contract terms that increased barriers to entry in the industry.

The Bureau’s case against the Toronto Real Estate Board (TREB) challenged anti-competitive restrictions that affected the ability of real estate agents and brokers to compete using new internet-based business models.<sup>81</sup> The Supreme Court’s decision in August 2018 dismissed TREB’s appeal of earlier decisions that required it to remove anti-competitive restrictions that prevented its members' from accessing and using real estate data in innovative ways. This litigated case provided important jurisprudence on many issues relating to digital markets and data, including non-price effects, intellectual property, and privacy considerations.

The Bureau is currently investigating whether Google has engaged in practices that harm competition in the online display advertising industry in Canada. In October 2021, the Bureau obtained a court order for Google to produce records and written information that are relevant to the investigation.<sup>82</sup>

### *Mergers*

In a 2019 merger, the Bureau reached a consent agreement to address competition concerns in the supply of oil and gas reserves valuation and reporting software in Canada following an investigation into the acquisition of Aucerna by Thoma Bravo.<sup>83</sup> The consent agreement required Thoma Bravo to divest certain software from its portfolio.

### *Advocacy*

The Bureau actively advocates for competition in digital markets, including an ongoing market study into Canada’s digital health care sector to better understand existing or potential impediments to innovation and choice.<sup>84</sup> The Bureau invited stakeholders to share their views on factors that may prevent access to the sector or

---

<sup>80</sup> [Commissioner of Competition and Softvoyage Inc. conclude an agreement following an investigation into allegations of abuse of dominance - Competition Bureau Canada](#)

<sup>81</sup> [Competition in Residential Real Estate Brokerage Workshop —Comments from the Competition Bureau of Canada - Competition Bureau Canada](#)

<sup>82</sup> [Competition Bureau news release regarding civil investigation of Google](#)

<sup>83</sup> [Competition Bureau statement regarding Thoma Bravo’s acquisition of Aucerna - Competition Bureau Canada](#)

<sup>84</sup> [Market Study Notice: Digital Health Care - Competition Bureau Canada](#)



limit innovation and choice in the delivery of products and services. This included public consultations as well as an online Digital Health Services Survey to hear from Canadians about their experiences with digital health care services.<sup>85</sup>

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

*Chief Digital Enforcement Officer*

The Bureau created the new position of Chief Digital Enforcement Officer (CDEO). Our first CDEO helped us implement new intelligence-gathering tools, and modernize and establish a strong foundation to enhance our digital enforcement capacity.<sup>86</sup>

*Digital Strategy*

Our CDEO spearheaded our first agency-wide digital strategy to execute on digital transformation. The strategy is based on five pillars:

- (a) Build a culture of innovation and continuous improvement;
- (b) Modernize technology and be digital by design;
- (c) Be insight driven and shift from reactive to proactive;
- (d) Open collaboration and cooperation; and
- (e) Evolve digital policy, compliance and governance.

The CDEO launched the Bureau Innovation Garage (BIG)—a platform where employees can experiment with new concepts, pilot new ideas and explore digital technologies. We also established a Digital Evidence Community of Practice, which finds efficiencies by sharing knowledge and best practices.

---

<sup>85</sup> [Competition Bureau seeking input on Canadians' experiences accessing and using digital health services - Canada.ca](#)

<sup>86</sup> [George McDonald joins the Competition Bureau as new Chief Digital Enforcement Officer - Canada.ca](#)



### *Intelligence Capabilities*

The Bureau is expanding intelligence-gathering efforts to monitor rapidly changing digital markets. The Bureau's Merger Intelligence and Notification Unit invested in new sources and tools to monitor merger activity that may impact competition, but which may not be reported under merger notification thresholds. The Bureau also established a Monopolistic Practices Intelligence Unit to examine and analyze trends in the marketplace and detect and deter anti-competitive behavior.

### *Exchange of Expertise*

The Bureau hosted an in-person Data Forum as well as a Digital Enforcement Summit to convene domestic and international experts and practitioners to identify trends and share expertise, including new tools and strategies for tackling emerging digital enforcement issues.<sup>87,88</sup>

### *New Investments*

To enable the Bureau to tackle issues in the modern economy, Canada's government announced a significant increase to the Bureau's budget commencing in 2021. The Budget includes one-time funding of CA\$96 million over five years and an ongoing yearly increase of CA\$27.5 million. Among other initiatives, the increased funding will be used to establish a Digital Enforcement and Intelligence Branch. This will allow the Bureau to use technology and analytic capabilities for enforcement and competition promotion. The Bureau plans to hire staff with specialized expertise, including data scientists and digital intelligence analysts. The Bureau will also invest in modern, sophisticated infrastructure, including cloud-based and artificial intelligence tools.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there***

---

<sup>87</sup> [Highlights from the Competition Bureau's Data Forum —Discussing competition policy in the digital era - Competition Bureau Canada](#)

<sup>88</sup> [Digital Enforcement Summit 2020 – Highlights - Competition Bureau Canada](#)



***are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

There have not yet been any reforms in Canada to better address digital competition issues and there are currently no proposed reforms pending before national legislative or regulatory bodies.

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled.***

### *Competition Policy in Canada*

The responsibility for competition policy in Canada rests with the Strategy and Innovation Policy Sector in the Department of Innovation, Science and Economic Development Canada (ISED). The Bureau continues to work with the policy sector on various issues. For example, the Bureau provided input to policy officials on digital issues following a request by the Minister of Innovation, Science, and Economic Development.<sup>89</sup> The Bureau has advocated through meetings, communications, public statements and appearances before Parliamentary committees for a comprehensive review of the *Competition Act* to ensure that it is fit for purpose, including a review of current market study powers, statutory tests for anti-competitive conduct and mergers, private enforcement mechanisms, and penalties, among other things.<sup>90,91</sup>

### *Interaction with Non-Competition Agencies, Laws, and Policy Areas*

The Bureau works regularly with other federal departments and agencies and with all levels of government (municipal, provincial and territorial). It works with regulators and policymakers to assess the competitive impact of new and existing policies and regulations.

- (a) Building on our market study on FinTech, we continue to work closely with regulators and policy-makers across Canada to recommend changes to make banking more convenient through FinTech and open banking, including

---

<sup>89</sup> [Letter from Minister of Innovation, Science and Economic Development to the Commissioner of Competition - Competition Bureau Canada](#)

<sup>90</sup> [New tools, stiffer penalties needed to police big tech companies, says competition watchdog | CBC News](#)

<sup>91</sup> [Evidence - INDU \(43-2\) - No. 29 - House of Commons of Canada \(ourcommons.ca\)](#)



through submissions to the Department of Finance and the Advisory Committee on Open Banking, and appearances before Parliamentary committees studying the issue.<sup>92,93,94,95</sup>

- (b) We have made recommendations to municipalities dealing with the disruptive arrival of ride-sharing services such as Uber and Lyft and many have acted on our advice.<sup>96</sup>
- (c) We developed and shared the Competition Assessment Toolkit – a step-by-step guide to identify policies that may impact competition.<sup>97</sup>
- (d) The Bureau sits on a number of interdepartmental working groups on topics like digital trade, international cooperation, and privacy. Bureau employees are also deepening working-level relationships with employees at the Office of the Privacy Commissioner of Canada, the Canadian Radio-television and Telecommunications Commission (CRTC), Justice Canada, Global Affairs Canada, Finance Canada, the Privy Council Office, and Treasury Board Secretariat on competition issues in digital markets. The Bureau provides analysis, monitoring and benchmarking, and expertise.

### *Consumer Protection*

The Bureau takes action against deceptive marketing practices in the online environment, including:

- (a) a settlement with Facebook that included a CA\$9 million penalty regarding false or misleading claims about the privacy of Canadians' personal information online<sup>98</sup>;
- (b) a settlement with FlightHub Group Inc.<sup>99</sup> that included a CA\$5 million penalty following an investigation that concluded the online travel

---

<sup>92</sup> [FinTech Market Study Portal - Competition Bureau Canada](#)

<sup>93</sup> [Submission by the Interim Commissioner of Competition to the Department of Finance Canada – Review into the merits of open banking - Competition Bureau Canada](#)

<sup>94</sup> [Competition Bureau comments to the Advisory Committee on Open Banking —Supporting a competitive and innovative open banking system in Canada - Competition Bureau Canada](#)

<sup>95</sup> [Standing Senate Committee on Banking, Trade and Commerce \(sencanada.ca\)](#)

<sup>96</sup> [Submission Regarding Transportation Network Service Regulations in British Columbia —Before the Legislative Assembly of British Columbia's Select Standing Committee on Crown Corporations - Competition Bureau Canada](#)

<sup>97</sup> [Strengthening Canada's economy through pro-competitive policies —A step-by-step guide to competition assessment - Competition Bureau Canada](#)

<sup>98</sup> [Facebook to pay \\$9 million penalty to settle Competition Bureau concerns about misleading privacy claims - Canada.ca](#)

<sup>99</sup> [Investigation of FlightHub ends with \\$5.8M in total penalties for company and directors - Canada.ca](#)



agency misled consumers about prices and services, made millions in revenue from hidden fees, and posted false online reviews; and

- (c) a settlement with Ticketmaster that included a CA\$4 million penalty following an investigation into the practice of “drip pricing” (offering appealing prices and adding mandatory fees later on in the transaction).<sup>100</sup>

The Bureau reviewed influencer marketing practices. We sent advisory letters to nearly 100 brands and marketing agencies in many sectors. In 2020, the Bureau issued new guidance to advertisers and influencers.<sup>101</sup>

The Bureau also has regional, domestic, and international consumer protection law enforcement partnerships with various police forces and government agencies.

In 2020-2021, the Bureau served as President of the International Consumer Protection and Enforcement Network (ICPEN). The theme of the Presidency was “building consumer trust in a changing marketplace”. The Bureau developed a digitally-focused programme of work, and established working groups on artificial intelligence, digital platforms, enforcement in the digital economy, and privacy. The Bureau also hosted international exchanges of best practices relating to digital issues.

### *Other Intersections with Privacy*

The Bureau worked with partners to tackle consumer protection and privacy issues in digital markets, including the Office of the Privacy Commissioner of Canada and CRTC. We issued letters to 36 companies in the mobile applications industry. These letters advised companies to review their practices and take preventive or corrective measures where necessary to meet their obligations under anti-spam, privacy, and competition legislation.

Data privacy issues were at the forefront of the Bureau’s case against the Toronto Real Estate Board (TREB).<sup>102</sup> The courts affirmed that privacy can be a legitimate business justification for engaging in otherwise anticompetitive conduct but found that TREB’s restrictions were not based on privacy concerns. Instead, evidence

---

<sup>100</sup> [Ticketmaster to pay \\$4.5 million to settle misleading pricing case - Canada.ca](#)

<sup>101</sup> [Influencer marketing and the Competition Act - Competition Bureau Canada](#)

<sup>102</sup> [Competition in Residential Real Estate Brokerage Workshop —Comments from the Competition Bureau of Canada - Competition Bureau Canada](#)



showed the privacy arguments were a “pretext” and an “afterthought” used to justify anti-competitive restrictions.

## France - Autorité de la Concurrence

The digital sector has consistently been set as one of the enforcement priorities of the *Autorité de la concurrence* (the “*Autorité*”) during the last years, and, as such, we have been devoting our full attention to tackling the competitive issues arising in the digital markets.

***Whether you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

The *Autorité* has been particularly active in its enforcement effort in the digital sector, and several important decisions have been issued recently, underlining our determination to use existing tools in a dynamic way to tackle harmful practices of major digital players.

In this respect, *the Autorité* has dealt with a number of abuse cases having national competition law and article 102 as a legal basis. We were able to intervene:

- (a) at the interim measures stage: the *Autorité* made use of this instrument to order Google to negotiate with publishers and press agencies the remuneration due to them regarding related rights.<sup>103</sup>
- (b) to settle and accept commitments: In the Google Newscorp decision of June 2021, we addressed for the first time the issue of programmatic advertising.<sup>104</sup> The *Autorité*'s decision provided quick and effective responses to businesses and publishers harmed by Google practices (preferential treatment to its proprietary advertisement technologies), by accepting the commitments offered by Google, to implement effective changes on the way it operates display advertising, in the context of a settlement procedure where Google did not challenge the facts of the case.
- (c) to impose behavioral remedies: In a Google Gibmedia case, dealing with an exploitative abuse from Google on the digital advertising market, the *Autorité* ordered, on top of a 150 million € fine, a series of behavioral remedies which

---

<sup>103</sup> See the *Autorité*'s [Décision 20-MC-01 of 09 April 2021](#) on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others and Agence France-Presse

<sup>104</sup> See the *Autorité*'s [Decision 21-D-11 of 07 June 2021](#) regarding practices implemented in the online advertising sector.

intended to clarify Google Ads' operating rules and account suspending procedures, thus allowing several business users and advertisers to develop their activity in a fairer and more secure environment.<sup>105</sup>

(d) to impose financial penalties: the Autorité has imposed heavy fines sanctioning practices of major digital players, notably Google (220 million in the Google Newscorp case and 150 million in the Google Gibmedia case mentioned above; see also a 500 million fine upon Google for non-compliance with several injunctions issued in the context of the interim measures decision related to publishers' and press agencies' remuneration mentioned above).<sup>106</sup>

The Autorité has also fined Apple (€1,1 billion – highest sanction ever imposed by our agency) for engaging in anticompetitive agreements within its distribution network and abuse of a situation of economic dependency with regard to its “premium” independent distributors, therefore using a concept rarely used until now, the concept of abuse of economic dependence.<sup>107</sup>

We remain particularly vigilant regarding **merger operations involving actors of the digital sector**. In 2018, the Autorité reviewed for the first time the merger of two online platforms (acquisition of Concept Multimédia (Logic-Immo.com) by the Axel Springer Group (SeLoger.com)).<sup>108</sup> While the transaction was cleared following an in depth investigation, the Autorité had to take into account network cross-effects, and took an interest in the importance of data in this transaction. Additionally, to assess the effects of the transaction, the *Autorité* examined the ability to stimulate competition not only of current competitors, but also of potential competitors, namely Facebook, Amazon and Google.

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming***

---

<sup>105</sup> See the *Autorité's* [Decision 19-D-26 of December 19, 2019](#), regarding practices implemented in the sector of online search advertising sector.

<sup>106</sup> See the *Autorité's* [Decision 21-D-17 of 12 July 2021](#) regarding the compliance with injunctions issued against Google in decision 20-MC-01 of 9 April 2020.

<sup>107</sup> Two of Apple wholesalers, Tech Data and Ingram Micro, were also fined, respectively, €76,1 million and €62,9 million for one of the anticompetitive agreement practices.

<sup>108</sup> See the *Autorité's* [Decision n°18-DCC-18 of 1 February 2018](#) relating to the acquisition of sole control of the company ConceptMultimedia by the Axel Springer Group debate on competition policy and digital challenges, February 2020; joint paper with the Bundeskartellamt on data and its implications for Competition Law, May 2016).



***a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

The *Autorité* has been consistently strengthening its capabilities and expertise in the digital field, in order to be able to timely adapt its approach and tools to tackle the challenges encountered in such field.

First, through the creation of a dedicated digital economy unit, in January 2020, which includes a wide range of profiles, such as engineers, lawyers, economists and data science specialists, and will add strong value to current and upcoming investigations of the agency.

The unit is tasked with developing in-depth expertise on all digital subjects, collaborate on investigations into anticompetitive practices in the digital economy and contribute to studies on new issues related to developments in digital technology. The new service is also expected to contribute to the analysis of the most complex cases regarding company mergers involving actors from the digital sector, and litigation procedures that concern compliance with competition law in a digital environment (e.g. breaches committed by digital means, regarding problems with referencing, ranking bias or collusion through the use of algorithms).

The digital economy unit will continue to grow, with the implementation of new tools able to monitor in real time the evolution of the general conditions of use of digital platforms and to deepen the monitoring of public markets by the algorithm bias.

Additionally, a transversal working group (involving different services of the *Autorité*) on the digital sector has been set-up in December 2020. This ad-hoc group has undertaken several work streams, in particular providing the General Rapporteur with suggestions for sector-specific inquiries and studies/reports in the digital sector (e.g. on the cloud computing technology), and prepare internal documentation aiming at providing support to a rapporteur confronted with a case in the digital sector (e.g. preparation of an “analysis grid” covering questions such as the determination of the relevant market, the demonstration of a dominant position and of an abuse, the evaluation of efficiency gains, and imposition of appropriate sanctions or commitments, in digital markets cases).

Finally, we have also engaged in a constant process of enriching our knowledge of the specificities of digital markets, through the preparation of relevant targeted studies (joint study with the Bundeskartellamt on algorithms and competition, published in November 2019; *Autorité*'s study on competition and e-commerce, June 2020) and additional publications (*Autorité*'s contribution to the debate on

competition policy and digital challenges, February 2020; joint paper with the Bundeskartellamt on data and its implications for competition law, May 2016).

The *Autorité* has also conducted sector-specific inquiries, and subsequently published opinions on the matters investigated (on the competitive situation in the sector of new technologies applied to financial activities, and more specifically, to payment activities<sup>109</sup>; on data usage in the online advertising sector<sup>110</sup>). In such instances, the *Autorité* is exercising its advisory role and its position can inspire new reforms or provide guidance to economic stakeholders. The *Autorité*'s opinions can drive the definition of public policies and, in some cases, highlight unexplored or under- exploited growth opportunities.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

The *Autorité* has engaged in a global process of modernizing competition law and the tools available, which will be key in addressing competition law issues in the digital sector.

In the *Autorité*'s **contribution to the debate on competition policy and digital challenges**, published in February 2020, we suggested several ways to tackle the challenges arising from the digital economy, including the possibility of complementing competition law, at national or European level, with a mechanism allowing to address harmful anticompetitive behaviors implemented by « structuring » operators. We also noted the lack of control of certain transactions below thresholds liable to raise competition concerns, and accordingly contemplated the use of the mechanism under article 22 of Regulation 139/2004 or the relevance of introducing a mandatory information requirement of every merger carried out by digital structuring platforms. The *Autorité* has taken part in the following initiatives:

- (a) The **renewed approach to Article 22** of regulation 139/2004 announced by the Commission (possibility of merger control of "below the threshold" transactions). The *Autorité* was the first national competition authority the proposed acquisition of Grail by the Illumina Group to refer to the Commission

---

<sup>109</sup> See the *Autorité*'s [Opinion 21-A-05 of 29 April 2021](#) on the sector of new technologies applied to payment activities.

<sup>110</sup> See the *Autorité*'s [Opinion 18-A-03 of 6 March 2018](#) regarding data usage in the online advertising sector

on the basis of Article 22. Following this referral, the Commission has decided to open a phase II examination of said transaction.<sup>111</sup>

- (b) The **on-going discussions on the Digital Markets Act**, the proposed EU regulation aiming at ensuring contestable and fair markets in the digital sector, by regulating practices implemented by large digital platforms. The *Autorité*, alongside the other members of the European Competition Network, is strongly advocating for an increased role of national competition authorities in the implementation of the DMA, which would entail both the establishment of a strong coordination and cooperation mechanism between the Commission and the national competition authorities, and, the possibility for competition authorities to directly enforce the DMA in some instances.

In France, the **ordinance transposing Directive (EU) 2019/1 (the ECN+ Directive)** has been published in May 2021.<sup>112</sup> This new legal framework will provide the *Autorité* with powerful new tools adapted to new enforcement challenges, particularly those raised by the development of large platforms. The *Autorité* will now have the possibility, *inter alia*:

- (a) **to set its own priorities** and reject complaints that do not correspond to them, thus allowing it to better allocate its resources, which can be fully devoted to the rapid resolution of the most important and harmful cases (including complex cases involving large digital platforms or algorithmic processes).
- (b) **to file an action on its own initiative to impose interim measures**, no longer simply following a request made by a company, incidentally to an application on the merits. This new opportunity will be particularly relevant in the digital markets, where the positions of stakeholders can change very rapidly, and should furthermore prove useful in overcoming any fear of retaliation on the part of would-be complainants.
- (c) **to issue structural injunctions** (e.g. the divestiture of a subsidiary or business) as well as behavioural injunctions, thus enhancing the deterrence of

---

<sup>111</sup> The *Autorité* was subsequently joined by Belgium, Greece, Iceland, the Netherlands and Norway

<sup>112</sup> This text is the result of the authorisation to implement the directive granted by the Law of 3 December 2020 on various provisions for adapting to European Union law in economic and financial matters ("DDADUE Law").



antitrust enforcement, especially toward large digital platforms that may no longer fear financial penalties.

The abovementioned recent DDADUE law modernized the *Autorité*'s internal procedures, by allowing our agency to fasten litigation proceedings, while respecting the adversarial principle, *i.a.* by abolishing the leniency notice, expanding the scope of cases that can be examined by a single member of the Board, and extending the scope of the simplified litigation procedure before the *Autorité* that accelerates the written adversarial procedure. Such measures will be key in the swift processing of cases necessary to keep pace with the fast-evolving nature of digital markets.

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled.***

The *Autorité* is committed to ensuring its work to promote competition in digital markets is coherent with other regulatory regimes in digital markets. In this regard, Article R. 463-9<sup>113</sup> of the French commercial code provides that the *Autorité* must communicate to every independent regulatory authority, all proceedings that are initiated which relate to sectors falling within their areas of expertise. These authorities then have two months to submit their observations.

The authorities concerned include, *inter alia* the “National Commission on Informatics and Liberty” (CNIL), the “French Broadcasting Regulator” (CSA) and the “French Telecommunications and Posts Regulator” (ARCEP).

Data protection and digital competition issues are, in particular, intrinsically linked. As an example, in October 2020, the *Autorité* received a referral from several associations representing various players of the online advertising sector, contesting practices implemented by Apple on the occasion of upcoming changes to its iOS 14 operating system (in particular the mandatory introduction of the App Tracking Transparency (ATT) framework). Within the context of its investigations, the *Autorité* solicited the observations of the data protection agency (CNIL) on the issues likely to be raised by the practices reported in the complaint in terms of personal data protection, in order to be able to appropriately assess the practices at stake.

---

<sup>113</sup> Article R. 463-9 of the French Commercial Code can be found [here](#)

## Germany - Bundeskartellamt

***Whether and how you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

The Bundeskartellamt has been very active in the field of the digital economy for over a decade and has already successfully concluded several landmark proceedings against large undertakings in this sector. It has therefore gained significant experience in this area in recent years.

Amongst the most notable cases relating to the digital economy was the Bundeskartellamt's proceeding against the hotel booking platform Booking.com. The authority had demanded Booking to refrain from the use of "narrow" MFN clauses in its terms of business applicable to hotels listed on the platform. Those clauses prohibit hotels from undercutting prices shown on Booking.com in their direct online and offline sales.<sup>114</sup> In May 2021, the German Federal Court of Justice confirmed the Bundeskartellamt's decision.<sup>115</sup> Another case concerned Amazon's terms of business and related practices towards sellers on its German marketplace which the Bundeskartellamt considered to be abusive. In response to the competition concerns expressed by the Bundeskartellamt, Amazon amended its terms of business for sellers on Amazon's online marketplaces worldwide.<sup>116</sup>

In the Bundeskartellamt's landmark decision against Facebook, the authority imposed extensive restrictions on the company in the processing of user data. The Bundeskartellamt's decision requires Facebook to refrain from using terms and conditions by which the platform entitles itself to gather data from numerous sources outside the social network facebook.com without users' freely given consent to combine them with "on-Facebook" data. In 2020, the German Federal Court of Justice issued a preliminary ruling that it had no serious doubts about the legality of the Bundeskartellamt's decision.<sup>117</sup> The main proceedings are still pending before the Düsseldorf Higher Regional Court. In April 2021, the court referred the case to

---

<sup>114</sup> Bundeskartellamt, Press Release of 23 December 2015; the Bundeskartellamt's publications are available at: [www.bundeskartellamt.de](http://www.bundeskartellamt.de).

<sup>115</sup> Courtesy Translation of press release of 18 May 2021 of German Federal Court of Justice, provided by the Bundeskartellamt.

<sup>116</sup> Bundeskartellamt, Press Release of 17 July 2019; Case Summary of 17 July 2019.

<sup>117</sup> Courtesy Translation of Press Release of 23 June 2020 of the German Federal Court of Justice, provided by the Bundeskartellamt; Courtesy Translation of Decision of 23 June 2020 of the German Federal Court of Justice, provided by the Bundeskartellamt.

the European Court of Justice with regard to the interpretation of the General Data Protection Regulation.<sup>118</sup>

With its new competences from the 10<sup>th</sup> Amendment to the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen – GWB), the Bundeskartellamt initiated proceedings against Facebook, Amazon, Google and Apple to determine whether the respective undertaking is of “paramount significance for competition across markets”.<sup>119</sup> Furthermore, based on the authority’s new competences under the new legal provisions applicable to large digital companies, the Bundeskartellamt is currently also examining the Google News Showcase service, Google’s data processing terms and the linkage between Oculus and the Facebook social network.<sup>120</sup>

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

The Bundeskartellamt has visibly expanded its focus and expertise on the digital economy as well as its capabilities in the field of data science over the years. Early on, the Bundeskartellamt had already dedicated more resources to tackle the issues raised by the digital economy. Furthermore, investigation methods are continuously modernised and adapted to meet the latest standards.

Among other measures, the Bundeskartellamt set up a “Think Tank Internet” in early 2015 in which legal experts and economists studied the latest economic research on platforms and networks and discussed how best to apply the results of their studies to antitrust case practice. The conceptual work on the digital economy was supported by the Bundeskartellamt’s General Policy Division. In August 2019, in the course of a restructuring of the Policy Division, a unit exclusively focussing on the “Digital Economy” was established to continue the work on related conceptual projects and especially to further support the work of the Decision Divisions in the digital area and on data-related issues. The “Digital Economy” unit carries out its

---

<sup>118</sup> Düsseldorf Higher Regional Court, decision of 24 March 2021, available at: [https://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2021/Kart\\_2\\_19\\_V\\_Beschluss\\_20210324.html](https://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2021/Kart_2_19_V_Beschluss_20210324.html) (in German only).

<sup>119</sup> Bundeskartellamt, Press Release concerning Facebook of 28 January 2021; Press Release concerning Amazon of 18 May 2021; Press Release concerning Google of 25 May 2021; Press Release concerning Apple of 21 June 2021.

<sup>120</sup> Bundeskartellamt, Press Release concerning Facebook of 28 January 2021; Press Release concerning Google of 25 May 2021; Press Release concerning Google News Showcase of 4 June 2021.



work in collaboration with other internal support units and in consultation with other authorities.

Since data analysis is required in many different proceedings, the Bundeskartellamt has several specialist units which deal with data analytics. The Chief Economist Team provides advanced data analyses for most complex antitrust proceedings such as phase II mergers. The IT Forensics Unit provides the infrastructure for hardcore cartel proceedings. In addition, data science is also located within the general IT division which reinforces the Bundeskartellamt's capabilities in this area.

Data analysis is applied in day-to-day work across the different units of the Bundeskartellamt. Our data analysts and data scientists within those units work particularly closely with our Decision Divisions. In addition to our case work, dealing with large amounts of data is particularly important for the two market transparency units for fuels and for electricity/gas. Both units have developed IT standards and a high level of automation for screening, reporting and forwarding data from a multitude of sources. This, for example, enables the provision of real-time information for consumers on fuel prices for close to 15,000 petrol stations and the monitoring of electricity and gas wholesale trading including production. Data science is conducted by economists, physicists, computer scientists, lawyers and mathematicians to tackle complex tasks.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

Our toolkit has developed considerably over the years. With the 9<sup>th</sup> Amendment to the GWB which entered into force in 2017, Germany was one of the first countries to incorporate provisions pertaining to the digital economy into competition law. The 9<sup>th</sup> Amendment introduced an explicit list of market power factors of particular relevance for platforms and networks and it provided helpful clarification on zero-price services as well. Furthermore, the Bundeskartellamt was given new competences to conduct sector inquiries if there is a reasonable suspicion that consumer law provisions have been violated. These competencies were granted in particular with a view to the digital economy where it only takes one illegal measure by a company to harm many consumers. With this amendment, the German legislator undertook serious efforts to tackle issues specifically raised by the digitalised economy. However, the experience gained by the Bundeskartellamt in a multitude of cases as well as various reports demonstrated that the established toolkit could be improved further.



These concerns were addressed in early 2021 when the 10<sup>th</sup> Amendment to the GWB entered into force. The review of the GWB was triggered not only by the highly dynamic digital economy and the rapid growth of digital ecosystems, but also by the obligation to transpose the ECN Plus Directive into national law. Besides many other changes, the amendment, in particular, modernises the law on abuse control and allows the Bundeskartellamt to better address the challenges posed by the digital economy.

Most significantly, the amendment allows the Bundeskartellamt to intervene at an early stage, faster and more effectively, in cases of certain conduct by companies which are of paramount significance for competition across markets. The respective newly introduced provision (Section 19a) stipulates a two-step approach: First, the Bundeskartellamt can declare that an undertaking has such significance, taking factors such as its strategic position and resources into consideration. As a second step, the Bundeskartellamt can intervene even on markets where the company is not yet dominant and prohibit certain types of behaviour. Conduct that the Bundeskartellamt can prohibit includes the self-preferencing of a group's own services or envelopment strategies. Contrary to traditional abuse control which aims at terminating or penalising the anticompetitive practices of a dominant undertaking *ex post*, the Bundeskartellamt is now able to prohibit companies of paramount significance for competition across markets from engaging in certain types of conduct much earlier. It can take measures that are, in a certain sense, preventive and that can contribute decisively to curbing the power of large digital ecosystems that extend across various markets.

The lawmaker has also reinforced the effectiveness of the new provision by shortening the legal process. Appeals against decisions issued by the Bundeskartellamt on the basis of Section 19a will be brought directly before the Federal Court of Justice as the first and last instance on all disputes in this regard.

Important changes also affect other areas. Further internet-specific criteria have been added to provisions governing traditional abuse control. In respect of the assessment of market power, the GWB now explicitly clarifies that the intermediation power of a platform can constitute a relevant factor in the assessment and that access to data can also be relevant in cases outside multi-sided markets and networks.

Besides updating the rules on the prohibited conduct of undertakings with relative market power, particularly in the platform economy, another particular new feature of the amendment to the GWB is that under certain preconditions the Bundeskartellamt can order in favour of dependent undertakings that access to data must be granted

in return for adequate compensation. The GWB also affords the Bundeskartellamt special powers to intervene in cases where an undertaking with superior market power on a platform or network market impedes the independent attainment of network effects by competitors, which might create a serious risk of a market `tipping` towards a larger supplier.

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas – such as privacy, consumer protection, or media sustainability – and how it was or is being handled.***

When examining whether a merger would significantly impede effective competition or determining a dominant position and the abuse of such a position, the Bundeskartellamt examines all relevant factors in a holistic approach. Privacy considerations can be a potential factor within those assessments, for example, access to not easily replicable (personal) data that could contribute to an undertaking's strong market position.

The Facebook case is a prominent example in which privacy considerations were relevant for the Bundeskartellamt's finding of an abusive practice. Among other conditions, private use of the social network is subject to Facebook being able to collect an almost unlimited amount of any type of user data from off-site sources, allocate these to the users' Facebook accounts and use them for numerous data processing purposes. Third-party sources include Facebook owned services such as Instagram or WhatsApp, but also third-party websites which include interfaces such as the "like" or "share" buttons. The Bundeskartellamt found that Facebook's terms of service and the manner and extent to which it collects and uses data amount to an exploitative abuse of dominance. In assessing the appropriateness of Facebook's behaviour under competition law, the Bundeskartellamt focused on the violation of the European data protection rules to the detriment of users.<sup>121</sup> In the course of the investigation concerning Facebook, the Bundeskartellamt closely cooperated with data protection authorities in clarifying the data protection issues involved.

In its Google News Showcase case, initiated in June 2021, the Bundeskartellamt is examining the Google News Showcase service offered by Alphabet Inc. and its affiliate Google. Apart from determining whether the undertaking is of paramount significance for competition across markets within the meaning of the newly

---

<sup>121</sup> The Bundeskartellamt's decision is not yet final; Facebook has appealed the decision which is now at the European Court of Justice.



introduced Section 19a GWB, the Bundeskartellamt is also examining whether the relevant contractual conditions include unreasonable conditions to the detriment of the participating publishers and, in particular, make it disproportionately difficult for them to enforce the ancillary copyright for press publishers [Leistungsschutzrecht der Presseverleger] introduced by the German Bundestag and Bundesrat in May 2021.<sup>122</sup>

Since 2017 the Bundeskartellamt has also exercised competences in the area of economic consumer protection by conducting sector inquiries if there is a reasonable suspicion that consumer law provisions have been severely violated. In this context, the Bundeskartellamt has already conducted sector inquiries into comparison websites, smart TVs and online user reviews and is currently conducting a sector inquiry into Video and Messenger Services. In addition to consumer protection issues, such sector inquiries can also raise questions relating to data protection law.<sup>123</sup> It should be noted that while the Bundeskartellamt can carry out investigations in the area of consumer protection and identify shortcomings, it does not, however, have the power to order the termination of infringements by official decree.

In early 2021, the Bundeskartellamt signed a declaration of intent with the Federal Office for Information Security (BSI) for a continuous cooperation in the area of digital consumer protection. BSI is the federal cyber security authority which ensures secure digitalisation in Germany. Apart from intensifying and further extending the exchange – which already occasionally took place at working level – the cooperation also envisages mutual assistance in tasks relating to consumer protection. The two authorities are pooling their competences and expertise for the consumers' protection and benefit.

The Bundeskartellamt's emphasis on consumer protection and privacy issues is not only reflected in its case work and its cooperation with other relevant authorities, but also extends to the Bundeskartellamt's engagement in international fora such as the OECD or the International Competition Network (ICN). For example, the Bundeskartellamt is currently part of the team of an ICN Steering Group project focussing on competition law enforcement at the intersection between competition, consumer protection and privacy.

---

<sup>122</sup> Bundeskartellamt, Press Release of 4 June 2021.

<sup>123</sup> As, for example, in the inquiry into smart TVs: Besides offering convenient benefits for users, smart TVs can also be used to collect large amounts of data on consumers and their usage behaviour. The Bundeskartellamt has established that almost all smart TV manufacturers active on the German market use privacy policies that have serious shortcomings in terms of transparency and thus violate the GDPR. Consumers find it especially difficult to understand privacy policies because they apply to a large variety of services and use processes.



## Italy - Autorità Garante della Concorrenza e del Mercato

***Whether and how you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

The Italian Competition Authority (AGCM) has intervened with its competition enforcement and advocacy powers in digital markets, employing a comprehensive set of tools to address competition concerns, gain a better understanding of digital transactions and ensure that the potential of innovation is not hindered.

While acknowledging the positive contribution of digital platforms to our economies, ensuring that these markets are competitive and dynamic is central to AGCM's priorities. In order to avoid harm from anti-competitive conducts, AGCM's efforts focus both on attention and transaction platforms.

In May 2021, Google was sanctioned over €100 million for its refusal to render its Android Auto system interoperable with Enel X's rival app providing services related to the recharging of electric vehicles and was imposed an interoperability remedy.<sup>124</sup> More specifically, by refusing Enel X interoperability with Android Auto, Google has unfairly limited the possibilities for end users to avail themselves of Enel X app when driving and recharging an electric vehicle. Google has consequently favoured its own Google Maps app, which runs on Android Auto, and enables functional services for electric vehicle charging. AGCM has also pointed out that Google's conduct could influence the development of electric mobility in a crucial phase of its launch. Lastly, in addition to imposing the sanction, the AGCM has ordered Google to make available to Enel X, as well as to other app developers, tools for the programming of apps that are interoperable with Android Auto.

Another investigation, which is still on-going, concerns Amazon's self-preferencing policy which grants marketplace benefits to vendors availing of Amazon's logistics services compared to those using third-party services.<sup>125</sup> The European Commission has opened an investigation regarding similar concerns that covers the European Economic Area, with the exception of Italy.

Also, the AGCM ascertained the anticompetitive effects of non-competition clauses forcing taxi drivers to source their rides only from their taxi cooperatives and not from

---

<sup>124</sup> See Case n. A529, press release of 13 May 2021, <https://en.agcm.it/en/media/press-releases/2021/5/A529>.

<sup>125</sup> See Case n. A528, press release of 16 April 2019, <https://en.agcm.it/en/media/press-releases/2019/4/A528>.

new innovative online channels provided by digital platforms,<sup>126</sup> while accepting commitments concerning parity clauses imposed by digital marketplaces to their vendors in the tourist accommodation booking sector as long as such clauses apply to online direct sales channels only.<sup>127</sup> In other investigations still pending, the AGCM is assessing whether: i) Apple and Amazon have colluded to ensure that only Amazon and “official” Apple resellers are allowed to sell the latter’s products on Amazon’s marketplace,<sup>128</sup> thus excluding competitive pressure from resellers who legitimately purchased the products from wholesalers but did not join the retail official programme;<sup>129</sup> ii) four online price comparison platforms have exchanged, with the insurance companies involved in the proceedings, commercially sensitive information on the economic conditions for the sale of motor vehicle liability policies, therefore, restricting competition.<sup>130</sup>

Moreover, the AGCM has intervened through a common sector enquiry - together with the Communication Regulator and the Data Protection Authority - to get a better understanding of the role of big data in framing competitive conditions in digital markets (see question 4).

Moving to advocacy, the AGCM submitted in March 2021 a comprehensive advocacy report recommending pro-competitive reforms that could contribute to accelerate economic recovery post Covid-19 and improve growth prospects in the medium and long term which includes proposals to introduce a new provision to tackle competitive distortions in markets where digital gatekeepers are active, as well as changes to merger control (see reply to question n. 3).<sup>131</sup>

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming***

---

<sup>126</sup> See cases I801A “Servizio di prenotazione del trasporto mediante taxi - Roma” and I801B “Servizio di prenotazione del trasporto mediante taxi - Milano”.

<sup>127</sup> See Case N. I779 – Market for touristic services-Online hotel booking, described in the AGCM submission to the *OECD Roundtable on Implications of E-commerce for Competition Policy* (see Box 1), available at: [https://one.oecd.org/document/DAF/COMP/WD\(2018\)32/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2018)32/en/pdf).

<sup>128</sup> See case n. I842, press release of 22 July 2020, <https://en.agcm.it/en/media/press-releases/2020/7/I842>.

<sup>129</sup> See case n. I844, press release of 16 November 2020, <https://en.agcm.it/en/media/press-releases/2020/11/I844>.

<sup>130</sup> See case n. I856, press release of 21 May 2021, <https://en.agcm.it/en/media/press-releases/2021/5/I856>.

<sup>131</sup> See the AGCM opinion n.S4143 “PROPOSTE DI RIFORMA CONCORRENZIALE AI FINI DELLA LEGGE ANNUALE PER IL MERCATO E LA CONCORRENZA ANNO 2021”, <https://www.agcm.it/dotcmsdoc/allegati-news/S4143%20-%20LEGGE%20ANNUALE%20CONCORRENZA.pdf>.

***a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

AGCM's competition organisational setting relies upon five investigative units based on economic sectors. As it wishes to coordinate online and offline investigative efforts at the specific economic sector level, promoting this way in-depth market knowledge of a particular industry, it has so far not established a digital unit. While this allows to ripe the full benefits from sectoral specialisation, some organisational measures have been adopted to deal with a cross-sector phenomenon such as the digitalisation.

First of all, specific horizontal roles - such as the Competition Director General, which coordinates the five competition sectoral investigative units, the Legal Service, the Chief Economist, the EU and International Affairs - ensure coordination among the sectoral units and provide technical support where needed. Moreover, sectoral units dealing with digital cases liaise on a regular basis to exchange knowledge and approaches to their respective cases.

Secondly, the AGCM has introduced two cross-sectors working groups, one dealing with digital markets more broadly and one more specifically on algorithms not only to ensure a consistent approach across the sectoral units, but also to strengthen the dissemination of knowledge acquired at the sectoral level.

Lastly, the AGCM has acquired some IT capabilities to work on data analytics and artificial intelligence, working closely with the Chief Economist.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

As already anticipated above (question 1), the AGCM has advocated for the introduction of new powers against digital gatekeepers, as well as proposed changes to merger control.

While recognizing that competition tools are in general equipped to deal with challenges brought about by the digital economy, a new pro-competition regime would allow to address more systematic harms with a national dimension associated with dominant platforms in these markets.

According to its proposal, the AGCM would be empowered to issue a decision designating certain undertakings as having primary importance for competition in

multiple markets based upon a list of non-exhaustive and non-cumulative factors. Designated undertakings would then be prohibited to adopt conducts that are considered to be particularly distortive of competition such as self-preferencing, preventing interoperability or data portability. If found to have adopted one of the black-listed conducts, the undertakings concerned would still be able to prove that their conduct is objectively justified. In case of non-compliance, the Authority could sanction the undertakings concerned and/or impose behavioural or structural remedies to terminate the prohibited conduct and its effects or to prevent a repeat of it.

Moreover, the AGCM calls for a harmonisation of merger control with EU law with respect, among others, to the substantive test, replacing the dominance test with the significant impediment to effective competition one, and the role of efficiencies, including an explicit reference to them in the weighing with the anti-competitive effects. These changes would also allow to deal with the digital sector more effectively tackling transactions that do not necessarily involve the creation or strengthening of a dominant position, but that are still capable to significantly impede effective competition.

The changes proposed by the AGCM have been taken into consideration in the recovery and resilience plan approved by the Italian Government.<sup>132</sup>

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled.***

With the increasing role of zero price digital markets and their non-price dimensions of competition, areas of overlap between competition and consumer protection are increasingly frequent, exacerbating the risk of consumer detriment as information asymmetries peak. In that context, consumers may fail to appreciate properly the legal and practical implications of their consenting to contractual terms attached to new online business propositions.

Based on its dual role enforcement experience, the AGCM considers that competition and consumer policies often reinforce one another and that the virtuous outcomes of such coordination can be particularly effective when enforcement responsibilities are located within the same agency. Indeed, such institutional

---

<sup>132</sup> <https://www.governo.it/sites/governo.it/files/PNRR.pdf>, p. 77.

arrangement allows for the selection of the most appropriate policy tool to meet the needs of a particular factual situation.

In that regard, the AGCM has intervened by using its consumer protection powers in order to foster trust and transparency as a necessary requisite for users to make aware and appropriate economic choices. For instance, the AGCM fined WhatsApp in 2017 and Facebook in 2018 for some unfair and aggressive commercial practices related to the utilization of user data such as the omission of information, deception in the collection and use of personal data, opt-in as default option for data sharing consent.<sup>133</sup>

More in general, the AGCM recognises that different public policy objectives (eg. consumer protection, privacy, pluralism) are at stake in digital markets and that both complementarities and tensions can arise among them. For this reason, the AGCM sought to explore the different dimensions of consumer data and its implication for competition, consumer protection and data protection privileging a multi-disciplinary approach by undertaking an inquiry on big data together with the Communication Regulator and the Data Protection Authority.

The final report, released in 2020, summarises the fact-finding activities carried out by the three authorities and delivers policy recommendations to the Government and Parliament on a framework addressing the issues raised by big data.<sup>134</sup> Mindful that consumer welfare standard may imply the evaluation of factors other than price and quantity, such as quality and innovation, the three authorities promote the establishment of a coherent and consistent framework on data collection and utilization, which enhances transparency by reducing asymmetric information between users and digital platforms, facilitates data portability and data mobility between platforms through the adoption of open and interoperable standard. Finally, the three authorities called for a strengthening of their investigative powers and an enhancement of the cooperation mechanism between them.

---

<sup>133</sup> For an overview of the consumer protection cases, see the AGCM contribution (section 4) to the 2020 OECD Roundtable Consumer Data Rights and Competition, available at: [https://one.oecd.org/document/DAF/COMP/WD\(2020\)33/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2020)33/en/pdf).

<sup>134</sup> The final report of the inquiry n. IC53 - BIG DATA, decision n. 28051 published on the AGCM Bulletin n. 9/2020 of March 2, 2020. See the AGCM contribution (section 3) to the *OECD Roundtable on Consumer Data Rights* which contains a summary of the main findings and the policy recommendations, [https://one.oecd.org/document/DAF/COMP/WD\(2020\)33/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2020)33/en/pdf).

## Japan - Japan Fair Trade Commission

***Whether and how you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

The Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) has been addressing various issues in the digital markets through enforcement of the Antimonopoly Act (hereinafter referred to as the “AMA”), establishment and amendment of guidelines, review of mergers and acquisitions, and fact-finding surveys.

In relation to enforcement, the JFTC investigated Amazon Japan G.K. (hereinafter referred to as “Amazon Japan”) and suspected that activities of Amazon Japan violated the Article 19 (Abuse of Superior Bargaining Position)<sup>135</sup> of the AMA. In response to the notice which the JFTC issued to Amazon Japan in accordance with the Commitment Procedures on July 10, 2020, Amazon Japan made an application for approval of the JFTC.<sup>136</sup> The JFTC, after considering the application, recognized that the commitment plan of Amazon Japan would conform to the requirements and approved it on September 10, 2020.

Abstract of the case: Since May 2016, Amazon Japan has conducted the following suspected acts of violation against suppliers whose business status is inferior to that of Amazon Japan (hereinafter referred to as “Suppliers”).

- (a) Amazon Japan deducted the payment to Suppliers from the amount stipulated in the contract.
- (b) Amazon Japan made Suppliers provide money for the reason that Amazon Japan cannot obtain the target profit for selling the products purchased from Suppliers.
- (c) Amazon Japan did not provide Suppliers all or part of the services to be provided, and made Suppliers provide Amazon Japan the payment in exchange for the services.

---

<sup>135</sup> Unfair Trade Practices stipulated in the Article 2, Paragraph (9), Item (v) [Abuse of Superior Bargaining Position] of the AMA.

<sup>136</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2020/September/200910.html>

(d) Amazon Japan made Suppliers provide Amazon Japan the payment for the reason of sponsorship for investment in the system of Amazon Japan.

(e) Amazon Japan returned the items that Amazon Japan judged to be overstocked to Suppliers.

The JFTC has also investigated Apple's conducts regarding the operation of App Store and announced the closing of the antitrust case in September 2021. Following the process of the investigation, Apple proposed to take measures to allow external links to be displayed on reader apps such as music streaming, e-book distribution, and video streaming etc.

Regarding merger review, due to the increased necessity of properly dealing with mergers in the digital market in recent years and other reasons, based on Action Plan of the Growth Strategy (June 21, 2019 Cabinet Decision), etc, the JFTC amended the Guidelines to Application of the AMA Concerning Review of Business Combination (hereinafter referred to as the “Business Combination Guidelines”) and the Policies Concerning Procedures of Review of Business Combination (hereinafter referred to as the “Business Combination Procedures Policies”) and published them in December 17, 2019.<sup>137</sup> In the Business Combination Guidelines the JFTC stipulated its views on a definition of relevant market and competition analysis, etc. based on characteristics of digital service (multi-sided market, network effect, switching cost, etc.). Additionally, the JFTC has the authority to review mergers that do not meet notification standards. Based on existence of such cases in the digital sector and others, in the Business Combination Procedures Policies, the JFTC stipulated as follows: Among merger plans that only the amount related to domestic sales, etc. of the acquired company does not meet notification standards, when the total consideration for the acquisition is large and the merger plan is expected to affect domestic consumers, the JFTC requests the parties to submit documents, etc. and reviews the merger plans.

Based on the above-mentioned guidelines, the JFTC reviewed the proposed acquisition of Fitbit, Inc. by Google LLC. The acquisition did not meet the notification criteria of the AMA and therefore was not required to notify to the JFTC in advance, but the total consideration for that the acquisition was large and domestic consumers were expected to be affected. Thus, the JFTC reviewed the acquisition.

An example of viewpoints of the review is whether any issue of closure or exclusivity of the market would arise from a viewpoint of the vertical merger (business of

---

<sup>137</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2019/December/191217.html>



providing operating systems (OSs) for wrist-worn wearable devices (Google Group's business) and business of manufacturing and distributing wrist-worn wearable devices (Fitbit Group's business)).

As a result of review, based on the premise that Google Group and Fitbit Group will implement their proposed remedies, the JFTC concluded that the acquisition would not substantially restrain competition in any relevant markets.<sup>138</sup>

In addition to enforcement and merger review, the JFTC has conducted a series of fact-finding surveys and published reports in order to clarify the actual status of transactions and the state of competition surrounding digital platform operators and to present the issues and the views as to the AMA and competition policy. Specifically, the JFTC published reports on (1) Business-to-Business transactions on online retail platform and app store (published on October 31, 2019)<sup>139</sup>, and (2) digital advertising (published on February 17, 2021).<sup>140</sup> Furthermore, the JFTC started a new fact-finding survey on cloud services in April 2021 and another fact-finding survey on mobile OS and mobile app distribution in October 2021.

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

The JFTC has established new units to address issues in the digital market and been actively collaborating with external experts in the digital field to strengthen our institutional capabilities.

In April 2020, the JFTC established the "Office of Policy Planning and Research for Digital Markets", which conducts activities such as widely collecting information on the digital market through fact-finding surveys and other means, and the "Senior Investigator" who specializes in investigating cases of suspected AMA violations by digital platform companies.

In addition, as a measure of the whole government, the Digital Market Competition Council is held under the Headquarters for Digital Market Competition (HDMC) established in the Cabinet in order to conduct research and deliberations on

---

<sup>138</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/January/210114.html>

<sup>139</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2019/October/191031.html>

<sup>140</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/February/210217.html>



important matters concerning the digital market. The Chairman of the JFTC is a member of the Council.

Also, the JFTC believes it important to liaise with external experts in order to deal with competition issues regarding digital markets, which are rapidly changing due to rapid development of technologies. Based on the idea, the JFTC has held the “Study Group on Competition Policy in Digital Markets” consisting of nine external experts since July 2020, in order to study issues and challenges on the AMA and competition policy in digital markets. The study group has discussed the theme of algorithms/AI and competition policy, and released the report “Algorithms/AI and Competition Policy” (published on March 31, 2021).<sup>141</sup> Furthermore, the JFTC appointed four external experts in digital markets as “Digital Special Advisors” in July 2021. They will provide the JFTC with their expertise related to digital markets, and the JFTC will utilize and reflect it in our activities such as fact-finding surveys regarding digital markets.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

The JFTC published “Report regarding trade practices on digital platforms (Business-to-Business transactions on online retail platform and app store)” on October 31, 2019. This report contributed to the planning process by the HDMC and the enactment of “the Act on Improving Transparency and Fairness of Digital Platforms”, which designates digital platform providers whose transparency and fairness must be significantly improved in particular compared to other digital platforms as “specified digital platform providers” and it makes such providers subject to specific regulations.

The JFTC also published “Final Report Regarding Digital Advertising” on February 17, 2021. Based on this report, the HDMC has been engaged in discussions on the development of rules in the field of digital advertising. At present, deliberations on the legal aspect are underway to add the field of digital advertising to the scope of application of the Act on Improving Transparency and Fairness of Digital Platforms.

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition***

---

<sup>141</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/March/210331.html>



***agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled.***

The JFTC has published guidelines and reports on a fact-finding survey and by a study group which have involved interaction with other policy areas. Appearing below is a short summary of them.

First, in December 2019, the JFTC published the “Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act on the Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc.” to ensure the transparency and the predictability for digital platform operators by clarifying the concepts of the regulation on abuse of a superior bargaining position about acquiring or using personal information, etc. between digital platform operators and consumers that provide it.<sup>142</sup> It is related to personal information protection.

Second, in the above mentioned Final Report Regarding Digital Advertising (published on February 17, 2021), the JFTC clarified it could be problematic under the AMA for a digital platform operator to obtain personal information without informing consumers of the purpose of use, for example, in the situation where the privacy policy is unclear, or to use personal information against the consumer’s will and beyond the scope required for achieving the purpose of use, even after the user has opted out. And with regard to the media sustainability, the JFTC clarified the desirable conducts of digital platform operators from the viewpoint of the AMA and competition policy. For example, the report states that it is desirable for digital platform operators to disclose necessary information to publishers, such as in the process of calculating the amount paid to publishers and to fulfil sufficient accountability.

Lastly, the JFTC has held the “Study Group on Competition Policy for Data Markets” under the Competition Policy Research Center (“CPRC”), which discussed various issues and challenges of competition policy in data markets. Following the discussion in the study group, the CPRC published the “Report of the Study Group on Competition Policy for Data Markets” in June 2021<sup>143</sup>. The report states that, when discussing the data market, it is important to discuss competition, data protection and consumer protection as a whole rather than discussing separately, considering the balance of each policy area. The report presents 6 points for addressing issues and challenges of data market to relevant ministries, including

---

<sup>142</sup> [https://www.jftc.go.jp/en/pressreleases/yearly-2019/December/191217\\_DP.html](https://www.jftc.go.jp/en/pressreleases/yearly-2019/December/191217_DP.html)

<sup>143</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/June/210625.html>



privacy authorities, and businesses. The 6 points include privacy concerns, which, for example, points out that it is important to provide sufficient explanation with users on their use of personal data and to obtain adequate approvals from users.



## UK - Competition and Markets Authority

Taking action to promote greater competition in digital markets has been a priority for the CMA. Key actions can be found in the CMA's digital markets strategy and are summarised below.<sup>144</sup>

***Whether you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

The CMA has been very active in its work to promote greater competition in digital markets, using a range of tools, including taking enforcement action in relation to anti-competitive conduct, blocking mergers which are likely to lead to a lessening of competition, and investigating entire markets where competition is not working well.

In relation to enforcement, the CMA has opened a number of abuse of dominance investigations in relation to digital markets. These include in relation to Google's proposals to remove third party cookies and other functionalities from its Chrome browser; Apple's conduct in relation to the distribution of apps on iOS and iPadOS devices in the UK, in particular, the terms and conditions governing app developers' access to Apple's AppStore; and whether Facebook is abusing its dominant position in the social media or online advertising markets through its collection and use of advertising data.<sup>145,146,147</sup>

We have also taken enforcement action in relation to anti-competitive agreements in digital markets, including taking action in relation to a price-fixing agreement where two Amazon marketplace sellers had agreed not to undercut each other's prices and used automated pricing software to effect their agreement. We have also taken action to address the use of most favoured nation clauses by a price comparison website in relation to home insurance products, and fined two musical instrument makers, in two separate cases, for breaking competition law by restricting online discounting of musical instruments.<sup>148,149,150</sup>

---

<sup>144</sup> See CMA's [Digital Markets Strategy June 2019](#) and [Digital Markets Strategy refresh January 2021](#).

<sup>145</sup> [Investigation into Google's 'Privacy Sandbox' browser changes - GOV.UK \(www.gov.uk\)](#) In June 2021, the CMA accepted commitments from Google to address these concerns.

<sup>146</sup> [Investigation into Apple AppStore - GOV.UK \(www.gov.uk\)](#)

<sup>147</sup> [CMA investigates Facebook's use of ad data - GOV.UK \(www.gov.uk\)](#)

<sup>148</sup> [Online sales of posters and frames - GOV.UK \(www.gov.uk\)](#)

<sup>149</sup> [Price comparison website: use of most favoured nation clauses - GOV.UK \(www.gov.uk\)](#)

<sup>150</sup> [Musical instrument firms to pay millions after breaking competition law - GOV.UK \(www.gov.uk\)](#)

We continue to take action in relation to mergers which are likely to lead to a lessening of competition including in, for example, Experian/Clearscore, which was abandoned following the CMA's provisional findings that the merger should be blocked because it could reduce innovation and slow product development in credit-checking services, and Sabre/Farelogix, which was blocked after the CMA found the merger could increase prices and decrease innovation in the market if Farelogix was removed as a competitor in airline software solutions.<sup>151,152</sup> The proposed merger of 2 DNA sequencing system firms, Illumina and PacBio, was also provisionally blocked after raising competition concerns, before being abandoned.<sup>153</sup>

Alongside competition enforcement and merger review, the CMA can also take a holistic look at a market as a whole through a market study or a market investigation.<sup>154</sup> This allows the CMA to undertake an in-depth examination as to whether competition is working well in a market, including powers to compel information from relevant parties. In July 2019, the CMA launched a market study into online platforms and digital advertising. Following this year-long investigation, the CMA recommended to the UK Government that a new pro-competition regulatory regime is needed to govern the behaviour of the major platforms funded by digital advertising, building on the conclusions and proposals put forward by the Furman review.<sup>155</sup> In June 2021, the CMA launched a market study into mobile ecosystems, investigating whether Google and Apple's powerful position in relation to the supply of operating systems, app stores and web browsers is resulting in harm to consumers.<sup>156</sup> The CMA also announced in October 2021 the intention to launch a market study into music streaming.<sup>157</sup>

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

The CMA has invested in a range of initiatives to enhance its capability to undertake work in digital markets. Key to these efforts is the establishment of a Data, Technology and Analytics (DaTA) Unit, comprising around 35 data engineers, data

---

<sup>151</sup> CMA case page: [Experian Limited / Credit Laser Holdings \(Clearscore\) - GOV.UK \(www.gov.uk\)](#)

<sup>152</sup> CMA case page: [Sabre / Farelogix merger inquiry - GOV.UK \(www.gov.uk\)](#)

<sup>153</sup> [Illumina's takeover of PacBio raises competition concerns - GOV.UK \(www.gov.uk\)](#)

<sup>154</sup> [Market Studies and Market Investigations: Supplemental guidance on the CMA's approach \(publishing.service.gov.uk\)](#)

<sup>155</sup> [Online platforms and digital advertising market study - GOV.UK \(www.gov.uk\)](#)

<sup>156</sup> [CMA to scrutinise Apple and Google mobile ecosystems - GOV.UK \(www.gov.uk\)](#)

<sup>157</sup> CMA case page: [CMA plans probe into music streaming market - GOV.UK \(www.gov.uk\)](#)



scientists, data and technology insight advisors, digital forensics specialists, and behavioural scientists. One of the purposes of this team is to provide analytical and data management expertise to help the CMA deliver cases more efficiently and effectively, particularly as these cases become larger and more complex. For example, the DaTA Unit developed the Resale Price Maintenance (RPM) monitoring tool: a tool to help case workers to identify RPM by looking at historical pricing data and identifying suspicious patterns.<sup>158</sup>

The DaTA Unit also help to identify and lead new cases, in addition to supporting the frontline areas. The unit are responsible for the CMA's 'analysing algorithms' programme to unpick how the algorithms used by firms work in practice, their impact on consumers and markets, and approaches regulators can use to analyse algorithmic systems and to address any harms.<sup>159</sup>

The CMA has continued to develop its approach to digital mergers, including utilising the DaTA Unit's expertise, improving its document review capabilities and updating its Merger Assessment Guidelines at the start of 2021 to bring them up to date with current best practice.<sup>160</sup> This builds on recommendations made in expert reports on how the CMA should approach its assessment of digital mergers and to take into account recent experience and case law.<sup>161</sup>

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

In the UK there are two key areas of reform being pursued to enable the CMA to better tackle competition issues in digital markets. Firstly, in 2019 the CMA made recommendations to the UK Government in relation to a range of reforms to the existing competition and consumer protection regimes, to ensure they are better adapted for the digital age, including the power to impose, as appropriate, interim measures during the pendency of an investigation.<sup>162</sup>

---

<sup>158</sup> [Restricting resale prices: how we're using data to protect customers - Competition and Markets Authority \(blog.gov.uk\)](#)

<sup>159</sup> [Algorithms: How they can reduce competition and harm consumers - GOV.UK \(www.gov.uk\)](#)

<sup>160</sup> [Merger Assessment Guidelines \(CMA129\) - GOV.UK \(www.gov.uk\)](#)

<sup>161</sup> ['Unlocking digital competition'](#) (Furman Review) and ['Ex-post assessment of merger control decision in digital markets'](#) (Lear Review) commissioned by the CMA.

<sup>162</sup> [Letter from Andrew Tyrie to the Secretary of State for Business, Energy and Industrial Strategy - GOV.UK \(www.gov.uk\)](#)

Secondly the CMA has recommended Government introduce a new pro-competition regulatory regime to address concerns about the most powerful digital firms and promote greater competition and innovation in digital markets. The CMA provided advice on the design and implementation of this new regime in the advice of its Digital Markets Taskforce.<sup>163</sup>

In summer 2021 the UK Government consulted on both sets of reforms.<sup>164, 165</sup> In relation to the new pro-competition regime for digital markets, the proposals would apply to digital firms with 'strategic market status' (SMS) – defined as those with substantial, entrenched market power in at least one digital activity and where the effects of that market power are particularly widespread or significant. Firms that meet this test would be required to adhere to a code of conduct that would provide a set of clear principles to prevent them from abusing their position and power. They could also be subject to pro-competition interventions such as data access and interoperability to drive vibrant competition and dynamic innovation. The regime would be overseen by a new Digital Markets Unit. Lastly the CMA would oversee a bespoke merger regime allowing for greater scrutiny of mergers involving SMS firms.

The new regime will require legislation and the UK Government has committed to legislating when Parliamentary time allows. In the meantime, the Digital Markets Unit (DMU), has been established within the CMA, on a non-statutory basis, to focus on preparing for the new regime.<sup>166</sup>

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled***

In digital markets, competition law and policy interact with a range of wider policy objectives and the CMA has taken a number of actions which address these interactions.

Alongside its competition remit, the CMA is also responsible for enforcing consumer protection laws in the UK and has an active portfolio of work focused on increasing consumer trust in online markets. This includes taking action to tackle the trading of fake and misleading reviews on platforms and investigating the disclosure of paid for

---

<sup>163</sup> [Advice of the Digital Markets Taskforce \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>164</sup> [Reforming competition and consumer policy – GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>165</sup> [A new pro-competition regime for digital markets - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>166</sup> [Non-statutory Digital Markets Unit: terms of reference - GOV.UK \(www.gov.uk\)](https://www.gov.uk)



endorsements on social media platforms.<sup>167,168</sup> The CMA has also undertaken investigations into online hotel booking sites, online gambling and secondary ticket sites to enable consumers to make informed decisions.<sup>169</sup>

The CMA is committed to ensuring our work to promote competition in digital markets is coherent with wider regulatory regimes in digital markets. In 2019 the CMA launched the Digital Regulation Cooperation Forum (DRCF), alongside Ofcom, the regulator responsible for the UK's new regime for online harms,<sup>170</sup> and the Information Commissioner's Office (ICO), the UK's data protection regulator, to deliver a step change in coordination and cooperation between regulators in digital markets.<sup>171</sup> The Financial Conduct Authority (FCA) has now also joined as a full member. In March we published a plan for how we intend to work together.<sup>172</sup>

A key interaction across many areas of our digital markets work has been the relationship between competition and privacy. As part of our work through the DRCF we recently published a joint statement with the ICO setting out our shared views on the relationship between competition and data protection in the digital economy. This emphasised the strong synergies between the aims of the two regimes.<sup>173</sup>

Lastly, as part of our work to prepare for the new pro-competition regulatory regime for SMS firms, the UK Government has asked the CMA to look at how codes of conduct could work in practice to govern the relationship between digital platforms and content providers such as news publishers, to ensure they are fair and reasonable.<sup>174</sup>

---

<sup>167</sup> [Online reviews - GOV.UK \(www.gov.uk\)](#)

<sup>168</sup> [Social Media Endorsements - GOV.UK \(www.gov.uk\)](#)

<sup>169</sup> [Online hotel booking - GOV.UK \(www.gov.uk\)](#)

<sup>170</sup> [Draft Online Safety Bill - GOV.UK \(www.gov.uk\)](#)

<sup>171</sup> [The Digital Regulation Cooperation Forum - GOV.UK \(www.gov.uk\)](#)

<sup>172</sup> [Digital Regulation Cooperation Forum workplan 2021/22 - GOV.UK \(www.gov.uk\)](#)

<sup>173</sup> [CMA-ICO joint statement on competition and data protection law - GOV.UK \(www.gov.uk\)](#)

<sup>174</sup> [New watchdog to boost online competition launches - GOV.UK \(www.gov.uk\)](#)



## **US - Federal Trade Commission**

***Whether and how you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

Identifying and taking action against anticompetitive conduct and transactions in rapidly evolving digital markets is an enforcement priority for the FTC. In July, the Commission approved resolutions authorizing investigations into key law enforcement priorities for the next decade. The resolutions empower agency staff to use compulsory process to investigate seven specific enforcement priorities, including technology companies and digital platforms. This will broaden the ability of FTC case teams to obtain evidence in critical investigations on key areas where the FTC's work can make the most impact and help the FTC better utilize its limited resources to identify and remedy anticompetitive conduct.

Recent enforcement actions in digital and tech markets include lawsuits: (1) alleging Surescripts, a health information company, used illegal vertical and horizontal restraints; (2) alleging Facebook engaged in unlawful monopoly maintenance; and (3) charging Broadcom with illegally monopolizing markets for semiconductor components. The FTC has also challenged mergers in digital markets, including Draft Kings/FanDuel and CoStar/RentPath, and involving nascent competition, including Nielsen/Arbitron, CDK/AutoMate, and Edgewell/Harrys.

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

We recognize that to identify and effectively enforce against anticompetitive acts and practices in digital markets, the FTC must be equipped with deep technological expertise. The FTC recently appointed a Chief Technologist and hired several other technology specialists to advise the Chair and Commission on technology matters, including the technical aspects of law enforcement actions, remedies, and technology policy recommendations. The FTC continues to explore opportunities to further improve its institutional capabilities to best address digital competition issues.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there***



***are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

*Executive Order on Promoting Competition in the American Economy*

In July, President Biden issued an Executive Order on Promoting Competition in the American Economy, emphasizing the government’s policy to promote fair, open, and competitive markets. The Order includes 72 initiatives by more than a dozen federal agencies intended to “promptly tackle” pressing competition problems in the US economy. Among the concerns that it cites is that “a small number of dominant Internet platforms use their power to exclude market entrants, to extract monopoly profits, and to gather intimate personal information that they can exploit for their own advantage.” Identifying “Internet platform industries” as a market of special concern, the Order proclaims that it is the policy of the Administration “to enforce the antitrust laws to meet the challenges posed by new industries and technologies, including the rise of the dominant Internet platforms, especially as they stem from serial mergers, the acquisition of nascent competitors, the aggregation of data, unfair competition in attention markets, the surveillance of users, and the presence of network effects.”

*Proposed U.S. Legislative Reforms*

The United States Congress currently is considering several proposed laws related to digital competition, ranging from broad-based antitrust reforms to narrowly-targeted bills. To become law, bills need to be voted out of the House of Representatives and the Senate, reconciled, and then signed into law by the President, a process of evaluation, discussion, and possible amendments that could span many months. While these bills may change as they move through the legislative process, they represent the prospect for significant change to competition policy and enforcement in digital markets.

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled.***

With legal authority over competition and consumer protection, the FTC is striving to ensure that its enforcement and policy actions approach work in a holistic, rather than siloed, manner. The FTC seeks to improve coordination among competition, consumer protection, and privacy activities and apply an integrated approach to our cases, rules, research, and other policy tools. This may help identify interconnections



between the conditions that give rise to competition and consumer protection violations. This is an area of ongoing work.

## US - Department of Justice

***Whether you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address competition concerns in digital markets. You may wish to highlight any particularly relevant cases.***

For more than two decades, the Department of Justice Antitrust Division (Division) has used its enforcement powers to investigate, litigate, and prosecute anticompetitive behaviour in digital markets. This has included filing civil lawsuits to stop anticompetitive conduct and mergers and bringing criminal price fixing charges. It also has used its non-enforcement powers to address digital market competition.

The Division brought one of the first and most high-profile lawsuits to address anticompetitive conduct related to digital markets when it successfully filed suit in 1998 to enjoin Microsoft's exclusionary practices designed to maintain a monopoly in personal computer operating systems and to extend that monopoly to internet browsing software.<sup>175</sup> A district court decision finding that Microsoft illegally maintained its monopoly was upheld on appeal. In 2012, the Division successfully sued Apple to enjoin its use of certain agreements to end e-book retailers' freedom to compete on price and substantially increase the prices that consumers pay for e-books.<sup>176</sup> The district court's finding that Apple's agreements were per se illegal was upheld on appeal.<sup>177</sup> More recently, the Division sued Google in October 2020, seeking to restore competition in search and search advertising markets.<sup>178</sup> The Division has alleged that Google entered into a series of exclusionary agreements that lock up the primary avenues through which users access search engines, and thus the Internet, by requiring that Google be set as the default general search engine on billions of mobile devices and computers worldwide and, in many cases, prohibiting the preinstallation of a competitor's search engine. The Google trial is scheduled to begin in late 2023.

The Division has successfully sued to block mergers in digital markets over the last decade, including a merger involving the acquisition of a nascent competitor. In

---

<sup>175</sup> [https://www.justice.gov/archive/atr/public/press\\_releases/1998/1764.htm](https://www.justice.gov/archive/atr/public/press_releases/1998/1764.htm). A 2001 settlement included terms intended to create the opportunity for software developers to compete with Microsoft, and gave personal computer manufacturers (OEMs) the flexibility to contract with competing software developers and place their products on Microsoft's operating system. [https://www.justice.gov/archive/atr/public/press\\_releases/2001/9463.htm](https://www.justice.gov/archive/atr/public/press_releases/2001/9463.htm).

<sup>176</sup> <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-three-largest-book-publishers-and-continues-litigate>.

<sup>177</sup> <https://www.justice.gov/opa/pr/second-circuit-affirms-apples-liability-se-unlawful-e-book-price-fixing-conspiracy>.

<sup>178</sup> <https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws>.



2011, it successfully filed a civil antitrust lawsuit to block the proposed acquisition by H&R Block of TaxACT that would have lessened competition in the digital do-it-yourself tax preparation software market.<sup>179</sup> In 2013, the Division blocked the proposed acquisition of PowerReviews by Bazaarvoice, a non-reportable merger that would have lessened competition for product ratings and review platforms in the United States, resulting in higher prices and diminished innovation.<sup>180</sup> More recently, the Division in 2020 sued to block Visa's proposed acquisition of Plaid, a nascent competitor.<sup>181</sup> The acquisition, which was abandoned before trial began, would have allowed Visa, a monopolist in online debit services, to eliminate Plaid as a competitive threat before Plaid had a chance to succeed.<sup>182</sup>

The Division has actively pursued criminal price fixing in digital markets. In 2015, it charged two executives of an e-commerce retailer in a price-fixing conspiracy in which the conspirators adopted specific pricing algorithms to fix the price of posters sold on Amazon Marketplace.<sup>183</sup> To date, one executive and the e-commerce retailer have pleaded guilty. Between 2017 and 2019, four companies and their top executives pleaded guilty to criminal charges related to a price-fixing conspiracy for customized promotional products sold online to U.S. customers.<sup>184</sup> The conspirators used social media platforms and encrypted messaging applications, such as Facebook, Skype and WhatsApp, to reach and implement their illegal agreements to fix the prices of customized promotional products sold online, including wristbands and lanyards. The companies agreed to pay criminal fines totalling more than eight million dollars. The prosecution was part of an ongoing investigation into price fixing in the customized promotional products industry that most recently yielded an indictment, criminal charges and fines related to other promotional products sold online.<sup>185</sup>

---

<sup>179</sup> <https://www.justice.gov/opa/pr/justice-department-files-antitrust-lawsuit-stop-hr-block-inc-buying-taxact>.

<sup>180</sup> <https://www.justice.gov/opa/pr/justice-department-files-antitrust-lawsuit-against-bazaarvoice-inc-regarding-company-s>; <https://www.justice.gov/opa/pr/justice-department-issues-statement-us-district-court-ruling-bazaarvoice-s-acquisition>.

<sup>181</sup> <https://www.justice.gov/opa/pr/justice-department-sues-block-visas-proposed-acquisition-plaid>.

<sup>182</sup> <https://www.justice.gov/opa/pr/visa-and-plaid-abandon-merger-after-antitrust-division-s-suit-block>.

<sup>183</sup> <https://www.justice.gov/opa/pr/former-e-commerce-executive-charged-price-fixing-antitrust-divisions-first-online-marketplace>; <https://www.justice.gov/atr/case-document/file/979231/download>; <https://www.justice.gov/atr/division-operations/division-update-2016/innovative-prosecutions-21st-century-schemes>; <https://www.justice.gov/atr/page/file/1312786/download>.

<sup>184</sup> <https://www.justice.gov/opa/pr/e-commerce-company-and-top-executive-agree-plead-guilty-price-fixing-conspiracy-customized>.

<sup>185</sup> <https://www.justice.gov/opa/pr/justice-department-announces-multiple-charges-price-fixing-conspiracies-customized>



The Division also has used its non-litigation tools, including its business review process,<sup>186</sup> to address competition related to digital markets. In 2019, for example, it concluded an extensive business review investigation into the standard-setting activities of the GSM Association (GSMA), a trade association for mobile network operators, which revealed that the GSMA had used its industry influence to steer the design of certain embedded technology (eSIMs) in mobile devices.<sup>187</sup> In response to the Division's concerns, the GSMA adopted new standard-setting procedures that enhanced the likelihood of procompetitive benefits for consumers of mobile devices; they also curbed the ability of mobile network operators to use the GSMA standard to avoid new forms of disruptive competition provided by eSIMs technology.

Finally, as described in greater detail in our response to the third question below, President Biden signed an Executive Order on Promoting Competition in the American Economy in July 2021. The order directs the Division to work with the Federal Trade Commission and other federal agencies to adopt a whole-of-government approach to address overconcentration, monopolization, and unfair competition in the American economy, including in digital markets. The Division has begun working to implement the Order through the establishment of a task force and outreach to a variety of other federal agencies who share jurisdiction across all sectors of the economy.<sup>188</sup> The Order specifically calls for the Division to work with the Department of Commerce and Federal Trade Commission to study the mobile application ecosystem and submit a report regarding its findings for improving competition.

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

The Division has taken several steps to strengthen its ability to address competition issues in digital markets.

First, in 2020 the Division realigned responsibilities among civil enforcement offices in recognition of the evolution of digital markets.<sup>189</sup> The realignment concentrated responsibilities for financial services and banking, including fintech, in a single office

---

<sup>186</sup> <https://www.justice.gov/sites/default/files/atr/legacy/2011/11/03/276833.pdf>

<sup>187</sup> <https://www.justice.gov/opa/pr/justice-department-issues-business-review-letter-gsma-related-innovative-esims-standard>.

<sup>188</sup> <https://www.justice.gov/asg/page/file/1410836/download>.

<sup>189</sup> <https://www.justice.gov/opa/pr/assistant-attorney-general-makan-delrahim-announces-re-organization-antitrust-divisions-civil>.



(the Financial Services, Fintech, and Banking Section); it also relieved the Division's primary technology section (the Technology and Digital Platforms Section) of certain responsibilities to allow it to focus on digital platforms.

Second, the Division has offered staff the opportunity to receive training with respect to recent developments in digital markets. In 2020, the Division launched an initiative to allow attorneys and economists to take advantage of online academic coursework offered by the MIT Sloan School of Management in blockchain, AI, and machine learning.<sup>190</sup> The program allowed select Division personnel to develop a basic understanding of how business use of the technologies might affect competition.

Third, the Division routinely engages in discussions with other agencies and organizations to better understand digital markets. It has engaged in bilateral discussions with other national competition authorities to solicit their views competition in digital markets, which helps inform the Division's own views. It also has worked with multilateral organizations, such as the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN), on projects related to better understanding and ensuring competition in digital markets, benefitting both the Division and competition agencies around the world.

Fourth, the Division routinely invites outside speakers and academics to present their work and thoughts on competition law and policy to staff and the public. In 2019, the Division held a public workshop that brought together academics and industry participants to explore industry dynamics in media advertising and its implications for antitrust enforcement and policy, including merger enforcement.<sup>191</sup> The workshop covered different types of television and online advertising, highlighting, among other developments, the role of online and mobile advertising networks. In 2020, the Division held a public workshop on venture capital and antitrust that explored, among other issues, what antitrust enforcers can learn from investors about how to identify nascent competitors in markets dominated by technology platforms.<sup>192</sup> Other recent presentations have focused on platform market issues and the rise of digital markets more generally.<sup>193</sup>

Finally, the Division has increased—and continues to seek to increase—staffing on digital market investigations and litigations by hiring new attorneys and economists.

---

<sup>190</sup> <https://www.justice.gov/opa/speech/file/1310506/download>.

<sup>191</sup> <https://www.justice.gov/atr/events/public-workshop-competition-television-and-digital-advertising>

<sup>192</sup> <https://www.justice.gov/atr/events/public-workshop-venture-capital-and-antitrust>

<sup>193</sup> <https://www.justice.gov/opa/speech/file/1310506/download>



***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

The United States Congress currently is considering several proposed laws related to digital competition, ranging from broad-based antitrust reforms to narrowly-targeted bills that would create exemptions or obligations for a small number of firms. To become law, a bill needs to be voted out of the House of Representatives and the Senate, reconciled, and then signed into law by the president, a process involving evaluation, discussion, and possible amendments that typically takes several months or more. While prospects for passage remain uncertain, if enacted, each of these bills would represent significant change to U.S. law regarding competition policy and enforcement in digital markets.

The House Judiciary Committee (HJC) has put forward four bills in response to their recently concluded multi-year investigation into competition in digital markets. The bills were reported by the HJC in June, and are awaiting further consideration by the full House of Representatives. Each covers a different proposed area of digital policy – mergers, interoperability, self-preferencing, and vertical integration – but share a common definition of “covered platform” that seeks to identify the most significant digital services offered by the largest four or five platforms to impose special obligations related to fairness and contestability. Under the bills’ definition, a “covered platform” is an online service (search, social, or marketplace) that (i) has at least 50 million monthly active users or 100,000 monthly active business users in the United States, (ii) has annual sales or a market capitalization of at least \$600 billion, and (iii) “is considered to be a critical trading partner.”

Among the HJC bills, the American Choice and Innovation Online Act (ACIOA) focuses on non-discrimination.<sup>194</sup> It prohibits any conduct by a covered platform that “advantages the covered platform operator’s own products, services, or lines of business over those of a competing business or potential competing business that utilizes the covered platform” or “excludes or disadvantages the products, services, or lines of business of a competing business or potential competing business that utilizes the covered platform.” The bill also would prohibit conduct that “materially discriminates between or among similarly situated persons that utilize the covered platform for the sale or provision of products or services.” These prohibitions apply unless the defendant can show, by “clear and convincing evidence,” that the conduct

---

<sup>194</sup> <https://www.congress.gov/bill/117th-congress/house-bill/3816/>.



would not result in harm to competition. ACIOA also prohibits denial of interoperability to rivals, among other specified practices, and directs courts to consider awarding structural relief if litigation reveals “conflicts of interest” on the part of the targeted platform.

The three other HJC bills address data portability and interoperability, acquisitions, and self-preferencing:

- (a) The Augmenting Compatibility and Competition by Enabling Service Switching Act (ACCESS Act)<sup>195</sup> would require covered platforms to let users transport their data from one platform to another and make their platforms interoperable with rivals’ products and services.
- (b) The Platform Competition and Opportunity Act (PCO Act)<sup>196</sup> would prohibit acquisitions by covered companies unless the platform can provide “clear and convincing evidence” that the target business does not compete with the covered platform, constitute nascent or potential competition, or otherwise enhance or increase the covered platform’s ability to maintain its market position, including through acquisition of additional data.
- (c) The Ending Platform Monopolies Act (EPM Act)<sup>197</sup> would require covered companies to divest themselves of any line of business, other than the covered platform itself, if such ownership “creates a substantial incentive for the covered platform to advantage the covered platform operator’s own products, services, or lines of business over those of a competing business or potential competing business that utilizes the covered platform.”
- (d) The United States Congress also is considering broader-based antitrust reform packages, which if passed would have significant impacts on digital market competition. Among these are the Competition and Antitrust Law Enforcement Reform Act (CALERA),<sup>198</sup> which would strengthen the ability of U.S. antitrust agencies to block anticompetitive mergers and obtain relief, including civil penalties, for exclusionary conduct; the Tougher Enforcement Against Monopolies Act (TEAM Act),<sup>199</sup> which would prohibit discrimination in distribution, including in digital markets; and the Trust-Busting for the Twenty-

---

<sup>195</sup> <https://www.congress.gov/bill/117th-congress/house-bill/3849/>

<sup>196</sup> [https://www.congress.gov/bill/117th-congress/house-bill/3826.](https://www.congress.gov/bill/117th-congress/house-bill/3826/)

<sup>197</sup> [https://www.congress.gov/bill/117th-congress/house-bill/3825](https://www.congress.gov/bill/117th-congress/house-bill/3825/)

<sup>198</sup> [https://www.klobuchar.senate.gov/public/\\_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf](https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf)

<sup>199</sup> <https://www.lee.senate.gov/services/files/23028e91-a982-43d0-9324-f6849c7522fc>



First Century Act, which would create new restrictions and obligations for so-called “dominant digital firms.”

Finally, in July 2021, President Biden issued an Executive Order on Promoting Competition in the American Economy,<sup>200</sup> emphasizing the government’s policy to promote a fair, open, and competitive marketplace. The Order includes 72 initiatives by more than a dozen federal agencies to “promptly tackle” pressing competition problems in the US economy. Among the concerns that it cites is that “a small number of dominant Internet platforms use their power to exclude market entrants, to extract monopoly profits, and to gather intimate personal information that they can exploit for their own advantage.” Identifying “Internet platform industries” as a market of special concern, the Order proclaims that it is the policy of the Administration “to enforce the antitrust laws to meet the challenges posed by new industries and technologies, including the rise of the dominant Internet platforms, especially as they stem from serial mergers, the acquisition of nascent competitors, the aggregation of data, unfair competition in attention markets, the surveillance of users, and the presence of network effects.”

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled.***

The Division routinely consults with non-competition law enforcers and regulatory agencies to better understand the ways in which the non-competition law or regulations may affect competition in a market. In addition, the Division often provides input to regulatory agencies whose responsibilities may touch on competition, as when an agency reviews business conduct under a public interest standard that includes a competition component. This is no less true in digital markets: It is not unusual for the Division to consult with law enforcers and regulators with responsibilities for consumer protection, privacy, or other issues that may bear on competition.

For example, the Division periodically provides competition advice to the Department of Commerce in its oversight of the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is responsible for technical elements of the Internet domain name system and competition for generic top-level domain name

---

<sup>200</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.



registrations. In 2008, the Division advised Commerce to encourage ICANN<sup>201</sup> to manage the introduction of new generic top-level domains in a manner that safeguards the interests of domain name customers in obtaining high quality domains at the lowest possible price.

---

<sup>201</sup> <https://www.justice.gov/atr/public-documents/division-update-spring-2009>

## European Commission – Directorate-General for Competition

***Whether and how you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

The European Commission (“the Commission”) has taken an active role to ensure that digital markets remain competitive using all the relevant competition law tools available to it including merger control, antitrust and sector inquiries.

The Commission uses merger control to ensure that digital markets remain competitive. The EU Merger Regulation<sup>202</sup> (EUMR) is sector neutral and applies equally to the digital sector as it does to other industries. That said, the EUMR is sufficiently flexible to allow the assessment of the specific issues which arise in the digital sector, including the multisided nature of platforms and data as an important input.

The Commission has undertaken investigations of a number of mergers in the digital sector including Facebook’s 2014 acquisition of WhatsApp<sup>203</sup>, Microsoft’s 2016 acquisition of LinkedIn<sup>204</sup>, Apple’s 2018 acquisition of Shazam<sup>205</sup>, and Google’s 2020 acquisition of Fitbit<sup>206</sup>. Where the Commission has found that a transaction would harm competition in the EU internal market, remedies have been required in order to secure clearance. These remedies have included (i) interoperability requirements, thus ensuring that competing products are not impeded from functioning with the merged entity’s platform, (ii) data silo obligations, that form technical separations to ensure that large digital companies do not use certain data to obtain non-replicable advantages in related markets, and (iii) access remedies, for example to APIs, thus ensuring access to interfaces necessary to the continued provision of competing products of services.

The Commission has also adopted a high number of antitrust decisions in the digital sector in recent years, including on Intel<sup>207</sup> concerning a set of anticompetitive practices (rebates conditioned on exclusivity and naked restrictions) in the market for CPUs for Windows PCs and laptops, on Microsoft Internet Explorer<sup>208</sup>, on

---

<sup>202</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0139>

<sup>203</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_1088](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_1088).

<sup>204</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_4284](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_4284)

<sup>205</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_5662](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5662)

<sup>206</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2484](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2484)

<sup>207</sup> [https://ec.europa.eu/commission/presscorner/detail/fr/IP\\_09\\_745](https://ec.europa.eu/commission/presscorner/detail/fr/IP_09_745)

<sup>208</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_09\\_1941](https://ec.europa.eu/commission/presscorner/detail/en/IP_09_1941)



Samsung<sup>209</sup> and Motorola<sup>210</sup> respectively a commitments and a prohibition decision which both concern Standard Essential Patents (“SEPs”). More recently, the Commission also adopted several decisions notably on Google Shopping<sup>211</sup>, Qualcomm<sup>212</sup>, Android<sup>213</sup> and AdSense<sup>214</sup>.

The Commission is also still investigating several cases in the sector notably concerning Apple’s App Store<sup>215</sup>, Amazon Marketplace<sup>216</sup>, Amazon Buy Box<sup>217</sup>.

Finally, in 2020, the Commission launched a sector inquiry into the Internet of Things (“IoT”) for consumer-related products and services in the European Union. A preliminary report in which a large number of respondents reported difficulties in competing with vertically integrated companies that have built their own ecosystems within and beyond the consumer IoT sector (e.g. Google, Amazon or Apple) has been published in June 2021 for public consultation.<sup>218</sup>

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

When it comes to the challenges posed by digital competition, the updating and strengthening of capabilities of competition authorities is one of the keys to ensure effective regulation. In that framework, the Commission has dedicated some funding in its last Multiannual Financial Framework<sup>219</sup> to support competition enforcement in a fast-moving, increasingly digital and globalised environment. The Commission will use these funds to support its digital transformation and deploy technology to help boost the speed and effectiveness of its investigations and proceedings.

In particular, DG Competition is using, and further improving, digital solutions (i) to extract and prepare documents and data quickly, and (ii) to search and review large amounts of documents efficiently. Moreover, DG Competition will invest (iii) into technology-assisted review as part of its eDiscovery digital solution to prioritize

---

<sup>209</sup> [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39939](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39939)

<sup>210</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_489](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_489)

<sup>211</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_1784](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1784)

<sup>212</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_421](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_421)

<sup>213</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4581](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581)

<sup>214</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_1770](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1770)

<sup>215</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1073](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073)

<sup>216</sup> [https://ec.europa.eu/commission/presscorner/detail/fr/ip\\_20\\_2077](https://ec.europa.eu/commission/presscorner/detail/fr/ip_20_2077)

<sup>217</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2077](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077)

<sup>218</sup> [https://ec.europa.eu/competition-policy/system/files/2021-06/internet\\_of\\_things\\_preliminary\\_report.pdf](https://ec.europa.eu/competition-policy/system/files/2021-06/internet_of_things_preliminary_report.pdf)

<sup>219</sup> [https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027/documents\\_en](https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027/documents_en)

relevant information for review, and (iv) into complementing tools that visualize large amounts of information.

DG Competition has also contracted services of data scientists to support particularly complex investigations by devising tailor-made technological solutions to integrate them into its suite of digital solutions.

Additionally, with its forthcoming eRFI digital solution, DG Competition has redesigned the entire process supporting its market investigations. The aim is to boost efficiency both for external respondents to reply to requests for information, and for case teams to design questionnaires and process the replies.

To move towards a digital enforcement, DG Competition has set up a special investigation unit directly attached to the Deputy Director-General for Antitrust staffed with new professional profiles (such as Data scientist, Digital investigator, Intelligence analyst). These digital investigation skills enhance DG COMP's detection and prosecution capabilities to better tackle the companies' use of new technologies and data that may infringe competition law.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

At the level of the European Union (and potentially the European Economic Area), on 15 December 2020 the Commission presented a legislative proposal for a Regulation “on contestable and fair markets in the digital sector”<sup>220</sup>. The proposal, more commonly referred to as the Digital Markets Act, seeks to address the negative consequences arising from platforms acting as digital “gatekeepers”. These are large companies that have a significant impact on the internal market, serve as an important gateway for business users to reach their customers, and which enjoy, or will foreseeably enjoy, an entrenched and durable position. Once the proposed Regulation is adopted, designated gatekeepers have to ensure compliance with the do’s and don’ts of the proposed Regulation within six months after one or more of the core platform services they provide have been identified as fulfilling the thresholds of the proposed Regulation.

In order to identify the “gatekeepers” that will fall under the scope of the Regulation, the Digital Markets Act establishes three cumulative criteria. Each of those criteria is

---

<sup>220</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A842%3AFIN>

accompanied by quantitative criteria. If all of the quantitative thresholds are met, the company concerned is presumed to be a gatekeeper, unless it submits substantiated arguments to demonstrate the contrary. If not all of these quantitative thresholds are met, the Commission may designate a company as a gatekeeper on the basis of a qualitative assessment following a market investigation. This mechanism also allows the Commission to designate as a gatekeeper a company which can be expected to enjoy such a position in the near future.

The DMA is the result of a long reflection process taking place across Europe and elsewhere in the world. It builds, *inter alia*, on the enforcement of competition law in digital markets over many years. The DMA puts in place *ex ante* regulation. It provides legal certainty upfront – about impermissible practices – hence aiming to prevent such practices from occurring in the first place.

Moreover, in 2020 the Commission announced its intention to reappraise its approach to referrals under Article 22 of the EUMR and in March 2021 published specific guidance about it<sup>221</sup>. This changed approach allows the Commission to encourage and accept referrals in cases where the referring Member State does not have initial jurisdiction over the case (but where the criteria of Article 22 are met). In so doing, the Commission would be able to review transactions that, despite involving targets with no or low turnover, could have a significant impact on competition in the internal market

While the approach is not sector-specific, it should help capturing transactions also in the digital sector, including those involving nascent competitors and innovative companies.

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas — such as privacy, consumer protection, or media sustainability — and how it was or is being handled.***

Under the EUMR, the Commission solely assesses the impact of a transaction on competition. As a general principle, public interests other than competition do not form part of the Commission's merger control assessment. As a result, the assessment of impact of certain transactions on for example, media plurality, is distinct from the competition review carried out by DG Competition and its

---

<sup>221</sup> [https://ec.europa.eu/commission/presscorner/detail/fr/ip\\_21\\_1384](https://ec.europa.eu/commission/presscorner/detail/fr/ip_21_1384)



assessment is conducted on different legal grounds by the national authorities of the EU Member States.

However, to the extent that issues such as privacy or consumer protection influence competition in digital markets, they are taken into account in the competitive assessment. For example, during the Commission's investigation of Microsoft's 2016 acquisition of LinkedIn, it was found that data privacy was an important parameter of competition between professional social networks. The transaction was therefore approved subject to commitments aimed at addressing the risk that competing professional networks be foreclosed, thus preserving consumer choice, in particular in relation to different levels of data protection. In comparison, during its investigation of Google's acquisition of Fitbit, the Commission did not identify evidence showing that the merging parties were competing with each other to provide the best privacy settings and therefore found that the transaction would not impact competition on privacy. During this investigation, the Commission worked in close cooperation with the European Data Protection Board.

## Australia – Australian Competition and Consumer Commission

The Australian Competition & Consumer Commission (ACCC) is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the Competition and Consumer Act 2010 (Cth) (the Act), regulate national infrastructure and undertake market studies.

***Whether and how you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

The ACCC has a range of tools to encourage compliance and prevent breaches of the Act, including using a range of enforcement remedies to address contraventions. Examining competition and consumer issues relating to digital platforms is a priority area for the ACCC, as identified in the ACCC's Compliance & enforcement policy & priorities.<sup>222</sup>

The ACCC's various digital platform inquiries have noted that the ACCC is proactively monitoring and investigating allegations of potentially anticompetitive conduct that may substantially lessen competition (including self-preferencing in relation to app marketplaces and allegations in relation to the advertising technology supply chain) and where appropriate may take enforcement action.<sup>223</sup>

The ACCC has instituted a number of enforcement proceedings under the Australian Consumer Law due to concerns about Australian consumers being misled by digital platforms. This has included action to address alleged false or misleading conduct in relation to certain digital platforms' collection and use of personal data for their commercial benefit. For example:

- (a) In October 2019, the ACCC took action against Google alleging that it had misled consumers about the personal location data that Google collects, keeps and uses from Android mobile devices.<sup>224</sup> This case was the first

---

<sup>222</sup> ACCC, [Compliance & enforcement policy & priorities](#).

<sup>223</sup> See for example: ACCC 'Digital Platform Services Inquiry second interim report: App marketplaces', April 2021, p.56 and ACCC 'Digital advertising services inquiry: Interim report' December 2020, p.15. To note, the ACCC does not generally discuss matters under investigation that are not publicly filed in a court unless it is in the public interest to do so.

<sup>224</sup> ACCC, [Google allegedly misled consumers on collection and use of location data](#), 29 October 2019.

enforcement action in the world relating to this conduct, and in April 2021 the Court found that Google had misled some consumers.

- (b) In July 2020, the ACCC alleged that Google misled Australian consumers in the way it sought to obtain their consent to expand the scope of personal information Google could collect and combine about their online activity. Google then used this newly combined personal information to improve the commercial performance of its advertising businesses.
- (c) In December 2020, the ACCC instituted proceedings in the Australian Federal Court against Facebook, Inc. and two of its subsidiaries. The ACCC alleges those companies engaged in false, misleading or deceptive conduct when promoting the Onavo Protect mobile app to Australian consumers, including through advertising on the Facebook platform. The ACCC alleges that while the app was represented to keep users' personal data private, it also collected and used significant amounts of users' personal activity for Facebook's commercial benefit.<sup>225</sup>

While the ACCC has used enforcement tools available under current legislation to address specific harms, these tools are not always well-suited to prevent potentially harmful conduct arising from the strong market positions of leading digital platforms, and the role these platforms can play as gatekeepers between businesses and customers.

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

#### *The Digital Platforms Inquiry (DPI) and the establishment of a Digital Platforms Branch*

In 2017, the Australian Government directed the ACCC to conduct an 18-month inquiry into the market power and the impact of search engines, social media and news aggregators on media, advertisers and consumers.<sup>226</sup> It considered a range of interrelated issues including data collection practices, consumer privacy and concerns about the lack of transparency as well as competition in digital platform

---

<sup>225</sup> ACCC, [ACCC alleges Facebook misled consumers when promoting app to 'protect' users' data](#), 16 December 2020.

<sup>226</sup> ACCC, [Digital platforms inquiry terms of reference](#), 4 December 2017.

markets. The ACCC published its final report for the Digital Platforms Inquiry (the DPI) in July 2019,<sup>227</sup> making 23 recommendations.

The Australian Government supported most of the 23 recommendations from the final DPI report, including the establishment of a permanent Digital Platforms Branch at the ACCC to continue providing close scrutiny of digital markets. The Digital Platforms Branch monitors and reports on the state of competition and consumer protection in digital platform markets, supports relevant ACCC enforcement action and undertakes inquiries as directed by Australia's Treasurer.

On 10 February 2020, the Treasurer directed the ACCC to undertake two further inquiries: the Digital Platforms Services Inquiry (DPSI) and an Ad Tech Inquiry.

### *The Digital Platform Services Inquiry (DPSI) 2020 - 2025*

The DPSI is a five year inquiry into markets for the supply of digital platform services.<sup>228</sup> The Digital Platforms Branch is required to provide 6-monthly interim reports to the Treasurer until the end of 2025. These reports allow the ACCC to systematically examine the activity of a broader range of platforms and digital services than the original DPI.

Digital platform services subject to this inquiry include search engines, social media, online private messaging, digital content aggregation platforms, media referral services and electronic marketplaces. The terms of reference of the inquiry also cover digital advertising and the data practices of digital platform service providers and data brokers.<sup>229</sup> The first four interim reports of this inquiry focus on:

- (a) online private messaging services in Australia (September 2020)<sup>230</sup>;
- (b) online app marketplaces (March 2021)<sup>231</sup>;
- (c) the provision of web browsers and general search services and in particular, the impact of default arrangements (September 2021)<sup>232</sup>; and
- (d) general online retail marketplaces (March 2022)<sup>233</sup>.

---

<sup>227</sup> ACCC, [Digital platforms inquiry - final report](#), 26 July 2019.

<sup>228</sup> ACCC, [Digital platform services inquiry 2020-2025](#), 10 February 2020.

<sup>229</sup> ACCC, [Digital platform services inquiry 2020-2025](#), 10 February 2020.

<sup>230</sup> ACCC, [Digital platforms services inquiry – September 2020 interim report](#), 23 October 2020.

<sup>231</sup> ACCC, [Digital platforms services inquiry – March 2021 interim report](#), 28 April 2021.

<sup>232</sup> ACCC, [Digital platforms services inquiry – September 2021 interim report](#), 11 March 2021.

<sup>233</sup> ACCC, [Digital platforms services inquiry – March 2022 interim report](#), 22 July 2021.

(e) The Ad Tech Inquiry

Concurrently, the ACCC is conducting an inquiry into markets for the supply of digital advertising technology services ('ad tech') and digital advertising agency services, with a final report due to the Treasurer by 31 August 2021.<sup>234</sup> A large focus of this inquiry is the complexity and opacity of the ad tech supply chain, which has reduced competition, choice and transparency in the provision of services used by many Australian businesses to promote their products and services online.

*The ACCC's Strategic Data Analysis Unit (SDAU)*

In 2016, the ACCC established the Strategic Data Analysis Unit (SDAU) as a specialist team offering expert analysis across the work of the ACCC, including supporting the Digital Platforms Branch in its consideration of competition and consumer issues in digital markets.

The SDAU comprises approximately 13 data professionals with skills in data analysis, data engineering and data science, who provide advice and expertise to inform ACCC work including merger decisions, enforcement actions and market studies such as the ACCC's inquiries on digital platform issues mentioned above.

In practice, this means assisting investigators and project staff to translate regulatory questions to executable data analysis; sourcing relevant data (whether through the ACCC's information-gathering powers, via third parties, or through open source collection such as web-scraping); and undertaking or advising on the analysis. Increasingly, SDAU also helps investigators analyse source code and other algorithm documentation. An example of source code analysis in practice – albeit in relation to consumer issues – is set out in *ACCC v Trivago*.<sup>235</sup>

SDAU has also increased the ACCC's ability to proactively detect competition issues, including in the digital space. Some relevant projects include: research into the effects of pricing algorithms on competition; the development of a tool to detect potential bid-rigging in procurement data; and the development of in-house web-scraping capabilities.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there***

---

<sup>234</sup> ACCC, [Digital advertising services inquiry](#), 10 February 2020.

<sup>235</sup> Australasian Legal Information Institute, [Australian Competition and Consumer Commission v Trivago N.V. \[2020\] FCA 16](#), 20 January 2020.



***are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

Australia's competition laws contained in Part IV of the Act (e.g. laws against cartels, misuse of market power) apply across all sectors of the economy and do not discriminate between digital and non-digital markets. However, there are specific regimes under the Act relating to digital markets. These include the Consumer Data Right (which gives consumers greater access to and control over their data in order to improve their ability to compare and switch between products and services)<sup>236</sup> and the new mandatory News Media Bargaining Code.

### *News Media Bargaining Code*

The News Media Bargaining Code (the code) was passed into legislation on 25 February 2021.<sup>237</sup> The code is designed to address the significant bargaining power imbalance between major digital platforms and Australian news businesses, following findings in the 2019 Final Report of the DPI that each of Facebook and Google had become 'unavoidable trading partners' for Australian news businesses.<sup>238</sup>

The code requires good faith bargaining between eligible news businesses and designated digital platforms for the inclusion of news on their platforms. It provides a negotiation, mediation and arbitration framework that allows news businesses to bargain individually or, relevant to smaller businesses, collectively with a designated platform. While the Australian Government has not yet designated any platforms to be subject to this mandatory code, the passage of the code has encouraged both Facebook and Google to enter into a range of new voluntary commercial agreements with Australian news businesses during 2021.

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled.***

Given the growing intersection of digital competition and consumer issues with other policy areas such as privacy, online safety and sustainability of public interest

---

<sup>236</sup> ACCC, [Consumer Data Right \(CDR\)](#), 9 May 2018.

<sup>237</sup> Parliament of Australia, [Treasury Laws Amendment \(News media and digital platforms mandatory bargaining code\) Bill 2021](#), 25 February 2021.

<sup>238</sup> ACCC, [Digital platforms inquiry – final report](#) page 58, June 2019.



journalism, the ACCC regularly engages with a range of other Australian regulators and government departments.

This has included working with other agencies to assist implementation of recommendations in the DPI final report.<sup>239</sup> For example, the ACCC worked closely with the Department of Treasury and Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) and the Australian Communications and Media Authority (the ACMA) on the design and implementation of the News Media Bargaining Code.

The ACCC also continues to consult closely with the ACMA and DITRDC when digital platforms were asked to implement an industry code of practice to counter disinformation online and improve news quality,<sup>240</sup> as recommended by the DPI.<sup>241</sup> The ACCC cooperates with the Office of the Australian Information Commissioner (OAIC) to perform a monitoring function under the Consumer Data Right.<sup>242</sup>

The ACCC continues to regularly engage with other Australian government agencies, including through formal Memoranda of Understanding allowing information sharing with the ACMA and the OAIC, as well as participating in working groups and arranging staff secondments between a number of agencies including the Treasury, DITRDC, the Department of Home Affairs, the Office of the eSafety Commissioner and the Attorney-General's Department.

---

<sup>239</sup> ACCC, [Digital platforms inquiry – final report](#) pages 30-38, June 2019.

<sup>240</sup> DIGI, [Australian code of practice on disinformation and misinformation](#), 22 February 2021.

<sup>241</sup> ACCC, [Digital platforms inquiry – final report, page 34](#), June 2019.

<sup>242</sup> ACCC, [Consumer Data Right \(CDR\)](#), 9 May 2018.

## India – Competition Commission of India

***Whether and how you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

During the past few years, the Competition Commission of India (“CCI”/ the Commission) has dealt with many cases in the digital space across sectors such as online hotel booking, food delivery, search engines, online retail, online cab booking, operating systems, online payment systems etc. Most of the cases in the digital sector were related to imposition of vertical restraints and abuse of dominant position. In all the cases, the CCI has adopted a nuanced and calibrated approach with the objective of promoting innovation and competition on merits. The Commission apart from acting on cases filed by Informants has also ordered investigations *suo motu*.

Some recent key interventions of the Commission in digital markets may be mentioned here. A traders association brought a case against online platforms viz. Amazon/ Flipkart alleging that these marketplaces through vertical arrangements with their respective ‘preferred sellers’ are foreclosing other non-preferred traders or sellers from accessing these online marketplaces. Presently, the matter is under investigation.

The Commission also initiated an investigation against Google in November, 2020 primarily in relation to three allegations, firstly, alleged pre-installation of Google Pay on Android smartphones resulting in a “status-quo bias” to the detriment of other apps facilitating payments through the Unified Payment Interface (UPI); secondly, mandatory use of Google Play Store’s payment system and Google Play In-App Billing system by the app developers for charging their users for purchase of apps on Play Store and/or for In-App purchases; and thirdly, excluding/discriminating against other mobile wallets/UPI apps as effective payment options in the Google Play’s payment system. Presently, the matter is under investigation.

Taking note of various recent media reports, CCI recently took *suo motu* cognizance of the updation of privacy policy and terms of service by WhatsApp whereby the users have to accept the unilaterally dictated “take it or leave it” terms in their entirety. Further users also have to accept mandatory sharing of their personalised data with Facebook, in a manner that is neither fully transparent nor based on voluntary and specific user consent. Presently, the matter is under investigation.

On the nonenforcement side market studies are another tool through which the Commission conducts its market monitoring exercise. Market Studies help in identifying anti-competitive activities of enterprises or structural conditions in markets that may be conducive to anti-competitive conduct, thereby helping the Commission in ascertaining its enforcement and advocacy priorities in different sectors.

The Commission has also undertaken a survey-based market study to understand market trends, distribution methods and strategies in ecommerce space. The aim of the study was to understand business practices and contractual provisions in ecommerce and their underlying rationale and implications for competition. The study surveyed three verticals in the e-commerce space namely online retail shopping, online hotel booking and online food delivery. The competition concerns identified in the study included the following:

- (a) **Platform neutrality:** Business users have raised concerns about the neutrality of the platform when platforms also act as a competitor on the marketplace and when the platforms engage in manipulation of search results, sellers'/service providers' data and user review/rating mechanisms.
- (b) **Platform to Business Contract Terms:** Bargaining power imbalance and information asymmetry between platforms and their business users may lead to unilateral revision in contract terms and imposition of 'unfair' terms by major platforms
- (c) **Existence of platform parity clauses and exclusive agreements** between platform and certain business users
- (d) **Deep discounting:** Deep discounting by platforms is found to be a concern when discounts are discriminatory and when they push prices to below-cost levels in certain product categories and affect both offline and online retailer's ability to compete.

On the basis of the study findings, the Commission has issued certain self-regulatory measures to the platforms with regards to transparency in search ranking parameters, clear and transparent policy on the actual and potential use of data collected by platforms; adequate transparency over user review and rating mechanisms; notification to business users regarding proposed revision in contract terms; and clear and transparent policies on discounts including discount rate and participation in discount schemes.



***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

Since both markets and the policy landscape in the digital economy in India are evolving, and the Commission would require expert views/inputs in understanding markets, technologies and the policy-antitrust interface on a continuing basis, a Think Tank, consisting of academics (in the areas of law, economics and computer sciences), technologists and policy specialists has been set up. The idea is to dip into their expertise from time to time on all matters related to the digital markets.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

The Government of India constituted a Competition Law Review Committee (CLRC) on 1st October, 2018 to review the existing Competition law framework and make recommendations to further strengthen the framework to inter alia meet new economy challenges. The Committee submitted its recommendations in 2019.

The Committee majorly held that the present antitrust framework in India is robust and flexible enough to deal with issues in the digital economy. However, certain recommendations were made by the Committee to make the Act more equipped. These recommendations included introduction of deal value thresholds for those mergers and acquisitions in India that do not get notified but may inhibit competition; covering hubs in the assessment of hub and spoke cartels and widening the scope of anti-competitive agreements to cover all kinds of agreements in addition to the introduction of settlements and commitments. Amendments to the Competition Act is currently under review.

The Government of India is in the process of introducing a number of regulatory reforms to address issues in the digital space. The Bill on Personal Data protection is under consideration of the Government. The Indian Government is also in the process of drafting a National E-commerce Policy to address regulatory challenges in the e-commerce space.

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition***



***agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability— and how it was or is being handled.***

Being an overarching market regulator, CCI has constant interface with sectoral regulators. In this inter-regulatory consultative mechanism, CCI engages with such sectoral regulators on the enforcement as well as policy side. CCI has been regularly giving its inputs to Government when any sector specific law or regulation has a competition interface.

In such areas, the approach of the Commission is essentially that of public policy advocacy for maintaining comity among regulators to ensure a harmonious and symbiotic relationship, with robust coordination and mutual learnings from each other for ensuring fair competition in the market.

CCI has also participated in the deliberations for drafting of National E-commerce Policy of India, which were initiated by the Department of Industry & Internal Trade, Ministry of Commerce and Industry.

## South Africa – Competition Commission South Africa

***Whether and how you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

The Competition Commission South Africa's (CCSA) approach in resolving anti-competitive issues in the digital space has been to use various competition approaches, such as, unilateral conduct enforcement, merger regulation, market inquiries and advocacy.

With regards to enforcement, the CCSA has investigated a number of cases where complaints have been lodged, including, a complaint lodged against Uber (in 2015)<sup>243</sup> and Bluespec (in 2017)<sup>244</sup>. These complaints did not reach litigation stage due to lack of evidence of anti-competitive effects. The CCSA is currently investigating a complaint lodged in December 2020 against WhatsApp and Facebook where it is alleged that WhatsApp is restricting Govchat, a supplier of citizen engagement services for government, from operating on the WhatsApp platform through unduly restrictive terms and conditions, in order to remove a potential threat to Facebook's own social networking position and WhatsApp monetisation strategies. The CCSA has also proactively initiated investigations into conduct in the digital space. These include price discrimination (or excessive pricing) against independent restaurants cases against the dominant online food delivery platforms, Uber Eats and Mr. D. Food (Naspers Group).

In merger regulation, there is a stronger focus in more recent years on ensuring digital markets remain contestable through merger control, such as, the prohibition of the Naspers/ We Buy Cars (2020) merger, in online used car marketplaces and a close scrutiny of online travel aggregation market through the Travelstart/Club Travel merger. The CCSA has also called for the notification of global mergers that may impact on our market, such as the Google/Fitbit merger which resulted in the imposition of conditions in South Africa.

With regards to market inquiry, in May 2021, the CCSA launched an online intermediation platforms market inquiry. The inquiry focuses on online intermediation

---

<sup>243</sup> In this matter the metered taxi industry alleged that Uber was (i) conducting unfair business practice as it secures partnerships with multinational companies that have exposure to its client base and ultimately giving it unparalleled market access (ii) charging below-cost rates.

<sup>244</sup> In this matter it was alleged that that through its Dreamtech App, Bluespec influenced the decision on who tows the motor vehicle from the accident scene.



platforms for goods, services and software, such as, e-Commerce marketplaces, vertical classifieds, software app stores, travel and accommodation aggregators, and food delivery services platforms. The inquiry is broadly focused on three areas of competition and public interest, namely (a) market features that may hinder competition amongst the platforms themselves, (b) market features that may give rise to discriminatory or exploitative treatment of business users, and (c) market features that may negatively impact on the participation of SMEs and/or historically disadvantaged firms. This will inform effective regulatory intervention in the market given its increasing importance.

In terms of advocacy, the CCSA has joined the Intergovernmental Fintech working group (IFWG), which includes financial services regulators as well as the information regulator. The CCSA aims to use this platform to move South Africa towards an open finance regime that promotes competition whilst also providing prudential and data safeguards.

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

The CCSA published a Digital Strategy that outlines its plans to address aspects of digital markets. The strategy covers a range of issues including digital platforms in South Africa with a discussion on big data and fintech; competition law in digital markets, covering merger controls, cartels and market conduct and abuse of dominance; regulatory issues in the digital economy, including promotion of access and connectivity, digitising government services and the role for regional coordination; and the impact of Covid-19 on the digital economy. The CCSA has started an advocacy initiative to highlight the digital market issues and is putting together a deliberate internal programme around internal skills development on enforcement.

In terms of building skills, the CCSA has prioritised digital markets across different divisions with the aim of building knowledge of these markets and enforcement tools through actual cases. This includes the notification and investigation of global mergers which allows the CCSA to learn from other jurisdictions which may have more experience in these areas. In this regard, the CCSA has had to collaborate with other jurisdictions such as the DG:COMP in the Google/Fitbit Merger. The collaboration with the DG Comp benefitted the CCSA in terms of the tools and methods used during the investigation, for example, the Technology Assisted



Review (TAR) tools used to manage the vast document volumes needed for the analysis.

The CCSA intends to establish a cartel forensics lab to deal with new challenges in the detection and investigation of collusion and assist generally on digital market cases. The cartel forensics lab team will be made up of experts such as software engineers and data scientists who can deal with unique issues such as algorithms and how they can be used in the market to facilitate anticompetitive agreements on price and other trading conditions.

The CCSA has also proactively sought engagement with other jurisdictions such as the European Union (EU) to provide an opportunity for mutual learning. The CCSA in 2021 utilised the SA/EU dialogue facility to host a series of workshops in partnership with the Directorate-General of Competition in the European Commission (DG Comp). The three-day workshop held between 29<sup>th</sup> – 31<sup>st</sup> March 2021 covered three broad themes (i) Competition Policy Strategy in Digital Markets (ii) Enforcement and Toolkits Needed for Digital Markets Cases and (iii) Cooperation and Coordination between Competition Regulators on Digital Markets Cases. The collaboration will be on-going to ensure that SA continues to draw from EU experience on digital competition issues.

The recently launched CCSA market inquiry into online intermediation platforms which will deepen understanding of the digital platforms. In addition, the CCSA is considering engaging an external panel of advisors on digital markets that might be drawn from former technology companies, venture capitalists, business school academics and strategists to provide the CCSA staff with knowledge and expert input into cases as and when needed.

The CCSA is specifically considering making use of the following existing arrangements in dealing with issues relating to digital markets: (i) Memorandum of Understanding (MOU) between competition agencies on the continent. The African continent has at least 32 competition agencies. CCSA has signed MOU with some authorities on the continent, such as Kenya, Mauritius and Namibia. Through MOU countries may have a platform to engage on digital markets challenges faced by member countries; (ii) The region also has a number of co-operation blocs, such as, SADC, COMESA and ECOWAS. These regional bodies and their associated competition enforcement committees can be leveraged as a platform to collaborate in the digital platform space; and (iii) Other platforms that can also be used include the African Continental Free Trade Agreement and the African Competition Forum (currently chaired by South Africa).



***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

The CCSA is of the view that the current legislation, including the recent amendments, provides sufficient scope to address digital market issues. Within merger control there is scope for the CCSA to request the notification of small mergers that lie below our thresholds, which is one means to address killer acquisitions and global mergers with local impact but limited direct revenues to a South African registered entity. The CCSA has also published a practice note for the notification of digital mergers that lie below the thresholds based on the valuation of the target company. Amendment of the Competition Act in 2018 introduced the creeping acquisition provisions which enables the authorities to prohibit killer acquisitions and other strategic and complementary acquisitions that gradually bolster market power by certain players in the market.

South Africa has always had a public interest element in the legislation which enables the law to address the impact on SMEs, historically disadvantaged persons, employment and economic development. The amendments to the Act strengthen these and provide a basis for addressing buyer power and price discrimination against SMEs and historically disadvantaged firms. This enables the CCSA to address the treatment of such firms by online platforms.

The Market Inquiry provision has been strengthened to provide scope for the implementation of remedies through a court order and these inquiries provide scope to address any factor hindering competition or affecting participation in markets. The CCSA is currently developing some internal practice notes to build consensus and certainty regarding its approach to the implementation of the amendments, including in the digital market space. The CCSA will also continue to publish Guidelines to make stakeholders aware how CCSA will implement the amendments.

CCSA is also reviewing its organizational structure to effectively perform market inquiries under the expanded mandate, increasing the capacity for provision of economic expertise and increasing the capacity for investigation of abuse of dominance, restrictive practices and cartel conduct, especially in digital markets.

Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled.



Given the interface between competition and privacy laws, the CCSA is exploring working arrangements with the Information Regulator of South Africa. The Information Regulator was only recently formed, and the South African Protection of Personal Information Act (POPIA) has only come into effect on 1 July 2021. The POPIA is based on the EU GDPR law. The CCSA is also seeking to engage with the Information Regulator around specific enforcement in the digital market space, determining where each regulator can best be effective.

In addition, the CCSA forms part of the Open Finance Inter-governmental Fintech Working Group (IFWG) comprising of other regulators such as South African Reserve Bank, Financial Sector Conduct Authority, National Credit Regulator, National Treasury, South African Revenue Services and Prudential Authority. IFWG was established in 2016 to understand the growing role of fintechs and innovation in the South African financial sector and explore how regulators can more proactively assess emerging risks and opportunities in the market. The Open Finance workstream has several players involved in payment system platform.

The CCSA has a relationship with the National Consumer Council (NCC) which oversees the Consumer Protection Act (CPA). The CCSA has worked with the NCC on enforcement in the context of Covid and will continue to explore avenues to work together.

Finally, the CCSA is also active in intra-governmental initiatives on digital markets such as the Presidential 4IR Initiative and the providing input into legislative initiatives such as the Department of Communications and Digital Technologies (DCDT) Big Data policy.

## South Korea – Korea Fair Trade Commission

***Whether and how you have sought to use enforcement or non-enforcement tools, law enforcement or regulatory action to address such issues. You may wish to highlight any particularly relevant cases.***

The KFTC focuses on using enforcement tools such as imposition of a corrective measure or an administrative fine against serious violations of law having a large impact on the market.

For instance, the KFTC imposed a corrective measure and fine against platform operators with market dominance for self-preferencing their own products and services by manipulating the search algorithm and preventing multi-homing by exclusive dealing. (October, 2020)

However, the KFTC also uses non-enforcement tools, such as proposing guidelines and driving voluntary correction, when there's a need to ensure swift damage relief, improve general trade practices within an industry, or enforce law against small and medium-sized enterprises.

For instance, the KFTC has examined contracts between different contracting parties including delivery platforms, local delivery service providers and delivery riders to revise unfair terms that are disadvantageous to platforms workers. Also, it has driven voluntary correction of unfair contracts by proposing the standard contracts and guidelines. (Still in progress, expected to be completed in July 2021)

***Any steps your agency has taken to strengthen its institutional capabilities to better equip it to deal with digital competition issues (for example, by forming a special unit, recruiting more data specialists, building new investigative tools, or gathering new/different evidence).***

To strengthen expertise in law enforcement in the ICT sector, the KFTC launched a special ICT Task Force, which handles major cases through close cooperation between KFTC officials in charge of investigation and outside experts.

Recently, the KFTC signed a MOU with research institutions and universities to further enhance the expertise and plans to closely cooperate with technical experts in implementing policies on platforms.

To enhance capabilities for investigating digital evidence, the KFTC has organized and operated a digital forensics team comprising of five forensic experts since 2010.



Since September 2017, the KFTC has established and operated Digital Investigation and Analysis Division comprising of fifteen forensic experts by securing a number of teams, personnel and devices.

The forensic experts at Digital Investigation and Analysis Division have uncovered deliberately deleted or hidden evidence by examining digital devices that are increasingly adopted in a digitalized work environment and provided training for KFTC employees, thereby improving the KFTC's overall capability for investigating digital evidence.

***Whether, in your jurisdiction, (a) there have been any national reforms or new laws or regulations to better address digital competition issues, or (b) there are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.***

The KFTC has proposed the "Act on Fair Intermediate Transactions on Online Platforms" to promote transparency and fairness of transactions in online platforms as well as mutually beneficial cooperation between platforms and online stores. The bill has been sent to the National Assembly, where discussions on the legislation are currently taking place.

Meanwhile, the KFTC is also pushing for the enactment of review guidelines providing specific criteria for market definition, assessing market dominance, determining illegality of major abusive practices such as self-preferencing, prevention of multi-homing and most favored nation (MFN) treatment, in an attempt to develop the criteria for law enforcement tailored to the unique features of online platforms.

***Any law enforcement, regulatory, or policy work by your agency concerning digital competition issues that has involved interaction with non-competition agencies or other laws or policy areas—such as privacy, consumer protection, or media sustainability—and how it was or is being handled.***

With the transition to the digital economy, addressing platform issues has become a larger part of the work for many ministries, which requires them to cooperate and coordinate work with each other.

The KFTC is cooperating with relevant ministries in developing a comprehensive, pan-governmental measure to address issues related to data and AI, the key features of the 4th Industrial Revolution.



Also, we're actively communicating with other relevant ministries, for instance, to clarify the scope of work related to platforms between the competition and industrial authority.

In addition, the KFTC is pushing for the amendment to the Act on the Consumer Protection in Electronic Commerce so as to prevent and compensate for consumer damage caused during the transaction involving online stores, platform operators and consumers. When the amendment takes effect, a Consumer Dispute Settlement Commission in full charge of e-commerce will be established in the Korea Consumer Agency.