



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

8 November 2023

## Contributing authorities



Competition Bureau  
Canada

Bureau de la concurrence  
Canada



Fair Trade Commission





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## I. Overview

1. In 2021, the UK Competition and Markets Authority (“CMA”) convened 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 the four guest authorities of 2021<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. In November 2021, a compendium was published, providing an overview of these policy approaches.<sup>4</sup>
2. The 2021 Compendium proved to be a useful tool for the agencies involved, other competition authorities outside the G7 as well as other stakeholders and the interested public. This is why in 2022, under the German G7 presidency, the Bundeskartellamt decided to follow up on the success of the first edition and again joined forces with the other competition authorities to publish an updated version, reflecting the latest developments in the area of competition enforcement and policy in digital markets.<sup>5</sup> In 2023, the Japan Fair Trade Commission (“JFTC”), under the Japanese G7 presidency, again updated this useful resource by incorporating the up-to-date information in cooperation with other competition authorities.
3. 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. The updated compendium provides a high-level overview of current developments in each jurisdiction, including enforcement actions, policy projects,

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<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.

<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> In 2021, the UK invited Australia, India, South Korea and South Africa as guest countries, 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.

<sup>4</sup> The 2021 edition of the Compendium can be accessed [here](#).

<sup>5</sup> The 2022 edition of the Compendium can be accessed [here](#).



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.

4. The updated compendium shows that competition authorities continue to dedicate an enormous amount of activity to digital markets, and that the level of commonality in the approaches that authorities are taking to address competition concerns remains high. 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 (also known as Most Favoured Nation clauses (MFNs)), non-competes, information exchange or price fixing, abuse of superior bargaining position, the imposition of unfair trading conditions 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. In the last year, continuing from the year before last, a number of investigations and enforcement actions have been successfully concluded, while a substantial number of new ones have been initiated.
5. Many competition authorities are also grappling with new complex issues within digital markets, like business practices of cloud computing, the role of algorithms and developments and potential challenges of generative AI. 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.
6. 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.
7. 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.

8. 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.
9. 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.
10. The concerns of the different competition agencies with respect to digital markets and the approaches to address them are remarkably similar, which seems 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 not only a demonstration of the profound international concern in this area, but also an opportunity for the global competition community: as we address these challenges individually and collectively, we demonstrate our deep commitment to support and learn from each other. This view has not wavered even now, the third year from the first edition in 2021.



## II. Introduction

11. This section provides an overview of the G7 competition authorities' work on digital competition, including background, current projects, and expected deliverables.
12. 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. In the following year, under the German G7 Presidency, this work was continued in the "Digital and Tech Working Group".
13. Furthermore, in April 2023, the G7 Digital and Tech Ministers held the G7 Digital and Tech Ministers' Meeting to discuss issues on digital technology, including digital competition, and adopted the G7 Digital and Tech Ministers' Declaration as the outcome document.<sup>6</sup> The Ministerial Declaration states that G7 members will share issues and challenges in promoting digital competition in using, implementing, and planning existing, new and upcoming laws and regulatory tools.<sup>7</sup>
14. The JFTC will hold a Joint Competition Enforcers & Policy Makers Summit in Tokyo on 8 November 2023. Its purpose is to facilitate international efforts to promote improvement of competitive market conditions and effective competition law enforcement. The summit participants will discuss enforcers' priorities, challenges and approaches in digital markets, recent updates on policy initiatives and frameworks in the digital competition field, common issues and challenges in planning and implementing laws and regulatory tools in digital competition, and how we can tackle issues on Big Techs that expand their activities across markets.
15. Direct and continuous exchange between enforcers and policy makers is important at a time where governments and competition agencies around the globe are continuing to reflect on how best to address competition concerns in digital markets. Informing each other about latest developments and successes but also potential gaps in enforcement or legislation is crucial in view of the large number of existing initiatives, but also because digital markets are continuously evolving at a fast pace.
16. Developed through collaboration among the 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

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<sup>6</sup> [https://g7digital-tech-2023.go.jp/en/topics/topics\\_20230430.html](https://g7digital-tech-2023.go.jp/en/topics/topics_20230430.html)

<sup>7</sup> The Ministerial Declaration can be found [here](#).

for this document to be a useful tool providing information on the latest developments to national governments, policy makers, and industry participants as well as counterpart competition authorities and regulators grappling with similar issues.

17. To create this compendium, contributors were asked to update their contributions. The four topics they were asked to comment on thus followed the same structure:
  - 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, security, consumer protection, or media sustainability.
18. 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 areas of commonality; and the final section is a compilation of the 13 individual agency contributions.
19. 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>8</sup>
20. The joint work under the 2021 UK G7 Presidency, the 2022 German G7 Presidency, and the 2023 Japanese G7 Presidency illustrates the commitment of the G7 competition agencies to continue the exchange on enforcement and policy approaches related to competition in digital markets and related topics. The 2023 Compendium, as in the past two years, reflects the most recent developments in competition enforcement in digital markets. A continuation of the compendium format by means of regular updates could prove to be useful.

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<sup>8</sup> The 2019 Common Understanding can be found [here](#).



### III. Key Challenges

21. This section summarises key challenges digital markets pose for competition policy and for the authorities responsible for competition law enforcement.
22. 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 came into sharp focus during the Covid-19 pandemic. And in a world where the pandemic is ending, that view has not changed.
23. 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 and other positions of economic power

24. 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>9</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.
25. 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>10</sup> Network effects may affect competition in a variety of ways. They may

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<sup>9</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>10</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

provide significant benefits to users and may encourage 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, i.e. the ability to price<sup>11</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.

26. 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 (e.g. consumers), relying on revenue from users on another side (e.g. advertisers) in order to maximise overall profitability.
27. 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** as well as AI solutions, and the ability to use that data to develop innovative applications, products, and services. For example, generative AI, which becomes a hot topic in the world in 2023, is clearly a service backed by massive amounts of data and thus it once again highlighted the importance of accessibility to data assets. 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. Moreover, there can be further data-related issues, in particular with respect to personal data and from the consumer perspective, e.g. concerning users’ choice as regards data processing, data portability, or interoperability.

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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.

<sup>11</sup> The ability to raise and maintain prices is used as a shorthand for the various ways in which market power can be exercised.

28. In addition to these features, another key aspect of the digital economy is that certain large companies do not only hold a strong position in one market, but are active on a number of different markets which are often interlinked in some way or another. In some cases, these links come in the form of vertically integrated products or services; in others, connections between them extend beyond a specific value chain. As a whole, the strong connection and interaction between the different products and services of a large digital company constitutes a **digital ecosystem**. For example, mobile OS and cloud computing can be elements of digital ecosystems, although the term is not limited to these and there exist many other forms of a digital ecosystem. Such ecosystems often benefit from economies of scope, for example when data from different sources can be combined for the development of new products. The strong integration of different products into one ecosystem also increases the degree of consumer lock-in. In addition to market-specific or platform-specific network effects, network effects can also play out across the ecosystem, extending beyond individual products and markets. Such ecosystem-specific network effects further increase the competitive advantage of a company orchestrating a whole ecosystem of different products and services.
29. 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 positions of economic power, providing these firms with the ability 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 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

30. 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 have been investigating harms or potential harms in a range of markets continuously, 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.

## IV. Key Findings

31. This section provides an overview of 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:
32. 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, algorithms and data, and digital advertising. Though, given the natural overlap between these areas, some cases could be considered to fall in more than one of these categories. In the area of merger control, many of the enforcement actions involve concerns about nascent competitors or data aggregation.
33. 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.
34. 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. And it reveals that in some jurisdictions, the process towards full enforcement of new or amended laws to tackle anticompetitive practices in digital markets is steadily progressing.
35. 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

36. Digital advertising is an area where competition authorities have been, and remain, particularly active, investigating and remedying anticompetitive conduct. For example:
- a. In 2023, the Autorité de la concurrence (“the French competition authority” or “the Autorité”) made use of Article 102 TFEU and national competition law to order Meta to define objective, transparent, non-discriminatory and proportionate criteria for accessing and maintaining partnerships in the ad verification sector.<sup>12</sup> In 2022, the Autorité accepted commitments from Meta with the aim of addressing competition concerns in the French market for non-search related online advertising.<sup>13</sup> In 2021, 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>14</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>15</sup>
  - b. The Autorité also reviewed changes that were upcoming with Apple iOS 14’s method of collecting users’ consent for their personal data, the so-called App Tracking Transparency (ATT) framework, 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. In 2021, it did not issue urgent interim measures against Apple but continues to

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<sup>12</sup> See the Autorité’s [Decision 23-MC-01 of 23 June 2023](#) regarding practices implemented in the online advertising sector.

<sup>13</sup> See the Autorité’s [Decision 22-D-12 of 16 June 2022](#) regarding practices implemented in the online advertising sector.

<sup>14</sup> See the Autorité’s [Decision 21-D-11 of 7 June, 2021](#) regarding practices implemented in the online advertising sector.

<sup>15</sup> See the Autorité’s [Decision 19-D-26 of 19 December, 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 €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](#).

investigate the merits of the case.<sup>16</sup> In June 2022, the Bundeskartellamt (“German competition authority” or BKartA) also initiated an investigation into ATT because Apple’s rules have raised the initial suspicion of self-preferencing and/or impediment of other companies.<sup>17</sup> In May 2023, the AGCM also launched a probe on Apple’s ATT which appears to be more restrictive for third-party app developers than the privacy policy applicable to the company itself; moreover, under the new policy, third-party developers and advertisers would allegedly be penalised in terms of the quality of the data made available by Apple<sup>18</sup> for advertising purposes.

- c. 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>19</sup> The European Commission has also issued Statement of Objections regarding possible abuse of dominance practices by Google (June 2023)<sup>20</sup> and Meta (December 2022)<sup>21</sup> in the advertising intermediation and classified ads fields, respectively.
- d. 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 conducts including for example, exclusionary agreements requiring Google as the default search engine and agreements prohibiting preinstallation of competitors’ search engines.<sup>22</sup> In 2023, the US DOJ also sued Google for monopolising digital advertising technologies, alleging that Google has engaged in the course of anticompetitive and exclusionary conduct, including by neutralising or eliminating ad tech competitors through acquisitions, forcing publishers and advertisers to use its products, and preventing them from using competing products.<sup>23</sup>

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<sup>16</sup> See Autorité’s [Decision 21-D-07 of 17 March, 2021](#) and in July 2023 the General Rapporteur notified an objection to Apple (the Autorité’s press release can be found [here](#)).

<sup>17</sup> The press release can be found [here](#).

<sup>18</sup> The press release can be found here: <https://en.agcm.it/en/media/press-releases/2023/5/A561-A561B>

<sup>19</sup> The European Commission 2019 decision on Google’s practices in online advertising can be found [here](#).

<sup>20</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3207](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3207)

<sup>21</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7728](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7728)

<sup>22</sup> The US DOJ’s 2020 decision on Google’s practices search advertising is explained [here](#).

<sup>23</sup> <https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies>

- e. In early 2021, the 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. In February 2022, the CMA accepted commitments from Google in relation to its proposals to remove third party cookies (TPCs) on Chrome and develop its Privacy Sandbox tools, and it has continued to monitor Google’s compliance with the commitments.<sup>24</sup> The CMA has also been investigating whether Meta abuses its dominant position in the social media or advertising markets, and has recently consulted on commitments to address concerns<sup>25</sup>. The CMA is also investigating whether Google might have abused a dominant position through its conduct in ad tech.<sup>26</sup>
  - f. 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>27</sup>
  - g. In October 2023, the JFTC announced the opening of the investigation and seeking information and comments from third parties concerning the suspected violation of the AMA by Google. The JFTC suspects that Google has restricted business activities of its competitors or its counterparties by (1) entering into license agreements with Android mobile device manufactures (hereinafter referred to as "OEMs") under which Google makes them install its applications, such as a search application named "Google Search", together with its application store named "Google Play", etc., and (2) entering into agreements with OEMs, etc. under which Google shares its revenue from its search advertising service with them on conditions including that they do not pre-install competitors' search application.<sup>28</sup>
37. Competition authorities have also launched in-depth market studies to understand the structure and dynamics of the complex digital advertising market. For example:

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<sup>24</sup> [Investigation into Google’s ‘Privacy Sandbox’ browser changes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-google-s-privacy-sandbox-browser-changes)

<sup>25</sup> [CMA investigates Facebook’s use of ad data - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/cma-investigates-facebook-s-use-of-ad-data)

<sup>26</sup> [Investigation into suspected anti-competitive conduct by Google in ad tech - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-suspected-anti-competitive-conduct-by-google-in-ad-tech)

<sup>27</sup> The CBC’s news release can be found [here](https://www.cbc.ca/news/technology/google-records-2021-10)

<sup>28</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2023/October/231023.html>



- a. In 2021, the JFTC published a report on digital advertising<sup>29</sup> which led to a Cabinet decision on including the digital advertising sector within the scope of Japan’s Act on Improving Transparency and Fairness of Digital Platforms. The Act went into full operation in October 2022 with the additional designation of “specified digital platform providers”.
- b. In 2019, the CMA 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>30</sup>
- c. In 2021, the Australian Competition and Consumer Commission (“Australian competition authority” or “ACCC”) completed an inquiry on the competition issues in the advertising technology supply chain.<sup>31</sup>
- d. The Bundeskartellamt published its final report on its sector inquiry into non-search online advertising in 2023. It builds on a report for public discussion published in 2022 and establishes that especially Google has a strong market position on almost all levels of the value chain, which provides the company with substantial power to set rules.<sup>32</sup>
- e. The French competition authority conducted a sector-specific inquiry on data usage in the online advertising sector.<sup>33</sup>
- f. In 2021, the US 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>34</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.
- g. While not primarily concerned with digital advertising, the European Commission’s sector inquiry on the “Internet of Things” (IoT), completed in January 2022, finds that data monetisation opportunities are expected to benefit the leading consumer IoT technology platform providers and, in particular, the

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<sup>29</sup> The JFTC’s final report can be found [here](#).

<sup>30</sup> The CMA’s final report can be found [here](#).

<sup>31</sup> The ACCC’s Digital Advertising Services Inquiry can be found [here](#).

<sup>32</sup> The Bundeskartellamt’s press release can be found [here](#).

<sup>33</sup> The sector inquiry regarding data usage in the online advertising sector can be found [here](#)

<sup>34</sup> The FTC’s final report can be found [here](#).

few consumer IoT players that are already present in the digital advertising market.<sup>35</sup>

## Data and algorithms

38. Given the important role that access to data relevant for competition plays in digital markets as a whole, and not only in so far as digital advertising is concerned, G7 and guest competition authorities have brought cases related to how companies use, process, and share data. For example:
- a. In 2019, the Bundeskartellamt ordered Facebook to refrain from using terms and conditions based on which the platform is entitled to gather data from numerous sources outside the social network facebook.com without users' freely given consent to combine them with "on-Facebook" data.<sup>36</sup> While this decision is still being appealed by Meta, after intensive talks with the Bundeskartellamt, in June 2023, Meta announced plans to implement a modified accounts centre which will allow Meta's customers to make a largely free and informed decision about whether they want Meta's services separately or in combined form.<sup>37</sup> In July 2023, the ECJ ruled that the Bundeskartellamt may take data protection rules into consideration when weighing interests in decisions under competition law<sup>38</sup>.
  - b. As a result of a proceeding of the Bundeskartellamt concerning Google's data processing terms, Google's services and third-party services can no longer be cross-used in separate services offered by Google or even be combined without the users' free and informed consent. Such an obligation will already result from the DMA for Google services which have recently been designated by the European Commission under the DMA. Google's Commitments provided to the Bundeskartellamt concern the processing of data across services involving more than 25 other services (including Gmail, Google News, Assistant, Contacts and Google TV).<sup>39</sup>
  - c. In 2021, the Italian competition authority made binding the commitments presented by the Italian Association of Insurers (ANIA) with respect to its proposed antifraud project which involves the creation of databases and the

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<sup>35</sup> The final report of the sector inquiry on IoT can be found [here](#).

<sup>36</sup> The case summary can be found [here](#).

<sup>37</sup> The press release can be found [here](#).

<sup>38</sup> [The press release can be found here.](#)

<sup>39</sup> The press release can be found [here](#).

development of common algorithms to define fraud risk indicators that insurance companies may use in their activities. The final commitments ensure fair and non-discriminatory access to the databases for non-ANIA members and prevent the sharing of sensitive data and information.

- d. In 2022, the European Commission accepted commitments by Insurance Ireland, an association of Irish insurers, to ensure fair and non-discriminatory access to its data sharing platform<sup>40</sup> and by Amazon in order to address the Commission's competition concerns over Amazon's use of non-public marketplace seller data and over a possible bias in granting to sellers access to its Buy Box and its Prime programme (see below).<sup>41</sup>
  - e. In February 2022, the CMA accepted commitments from Google in relation to the planned development of its Privacy Sandbox tools. These commitments, inter alia, restrict the sharing of data within its ecosystem to ensure that Google does not gain an advantage over competitors when third-party cookies are removed and commitments to not self-preference its advertising services.<sup>42</sup>
  - f. In July, 2022, the AGCM opened an investigation against Google for refusing interoperability in sharing data on its platform with Hoda, a company which has developed innovative data-based services allowing consumers to monetise their personal data, by exploiting the right to data portability established by Art. 20 of the GDPR. In July 2023 the AGCM closed the investigation, by accepting Google's commitments aimed at facilitating the export of data to third-party operators by users and enabling other digital services operators to access personal data users generate through their activity on Google's services like YouTube and Search<sup>43</sup>.
  - g. In 2022, the German competition authority also examined Catena-X, a cooperation within the automotive industry which aims to create a data network for collaboration. The competitive assessment as to how Catena-X intends to promote the development of uniform standards for data transfer and cooperation regarding R&D raised no objections.<sup>44</sup>
39. As there often is a certain link between access to data and the possibilities how such data can be put to productive use, G7 and guest competition authorities are working

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<sup>40</sup> The press release can be found [here](#).

<sup>41</sup> The press release can be found [here](#).

<sup>42</sup> Investigation into Google's 'Privacy Sandbox' browser changes - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>43</sup> See press release: <https://en.agcm.it/en/media/press-releases/2023/7/A552>

<sup>44</sup> Bundeskartellamt, [press release](#) of 24 May 2022.



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 (used to inform the report into general online retail marketplaces),<sup>45</sup>
  - b. Producing reports such as the joint report by the German competition authority and the French competition authority in 2019 on algorithms and competition,<sup>46</sup> which was preceded by a joint conceptual study by these two authorities in 2016 into data and its implications for competition law<sup>47</sup>, and the CMA's report on algorithms in 2021.<sup>48</sup> The CMA also contributed to the UK Digital Regulation Cooperation Forum's<sup>49</sup> papers that explored the benefits and harms of algorithms<sup>50</sup>, the role of regulators in auditing algorithms<sup>51</sup> and transparency in the procurement of algorithmic systems<sup>52</sup>;
  - c. Convening study groups like the Autorità Garante della Concorrenza e del Mercato ("Italian competition authority" or "AGCM") and the JFTC; or
  - d. Holding hearings like the US Federal Trade Commission ("US FTC").
40. 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.
41. In addition to this research and knowledge building, some authorities have taken enforcement action in relation to cases involving algorithms.

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<sup>45</sup> ACCC, Digital Platform Services Inquiry, [March 2022 interim report on general online retail marketplaces](#), 28 April 2022.

<sup>46</sup> The joint report is published [here](#).

<sup>47</sup> The joint report is published [here](#)

<sup>48</sup> The CMA's report can be found [here](#).

<sup>49</sup> [The Digital Regulation Cooperation Forum - GOV.UK \(www.gov.uk\)](#).

<sup>50</sup> [The benefits and harms of algorithms: a shared perspective from the four digital regulators \(publishing.service.gov.uk\)](#).

<sup>51</sup> [Auditing algorithms: the existing landscape, role of regulators and future outlook \(publishing.service.gov.uk\)](#).

<sup>52</sup> [Transparency in the procurement of algorithmic systems: Findings from our workshops - GOV.UK \(www.gov.uk\)](#)

- a. In 2015, the US DOJ charged two executives of an e-commerce retailer with using specific pricing algorithms to fix the price of certain goods sold on Amazon's Marketplace.<sup>53</sup>
- b. The 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 effect their agreement.<sup>54</sup>
- c. More recently, the KFTC imposed corrective measures as well as a fine against the search engine Naver for self-preferencing their own services at the search results page by manipulating the search algorithm.

### Marketplaces and app stores

42. 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 AGCM completed two investigations against Amazon. In one, Amazon was fined € 1.13 billion for leveraging its dominant position in the Italian market for intermediation services on marketplaces in order to favour the adoption of its own logistics service. The AGCM also imposed behavioural measures regarding sales benefits for and visibility of sellers on the Amazon Marketplace.<sup>55</sup> In the other, it ruled that a brand-gating agreement between Amazon and Apple which restricted certain resellers of Apple products was anti-competitive.<sup>56</sup>
  - b. The European Commission accepted commitments in its two ongoing investigations against the Amazon Marketplace, which addressed its concerns. The first investigation related to the use non-public business data of third party sellers by Amazon's own retail business. The second 'Buy Box' investigation addresses concerned around the preferential treatment of Amazon's retail business and sellers using Amazon's logistics services, in the selection

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<sup>53</sup> The press releases can be found [here](#) and [here](#). One defendant pleaded guilty (see press release [here](#)).

<sup>54</sup> Further detail can be found on the CMA's case page [here](#).

<sup>55</sup> See Case no A528 press release of 9 December 2021, <https://en.agcm.it/en/media/press-releases/2021/12/A528>

<sup>56</sup> See Case n. 1842, press release of 17 December 2021, <https://en.agcm.it/en/media/press-releases/2021/12/1842>

mechanisms for the 'Featured Offer' and the in the Amazon Prime programme. In July 2022, Amazon offered commitments aimed at addressing the preliminary concerns in both investigations - The Commission made the final commitments binding on 20 December 2022.<sup>57</sup>

- c. The CMA opened an investigation into Amazon over concerns that practices affecting sellers on its UK Marketplace may be anti-competitive.<sup>58</sup> The CMA consulted on commitments to address these concerns and is currently considering representations in response to this consultation.<sup>59</sup>
- d. The JFTC 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>60</sup> It also investigated Rakuten's conduct regarding the operation of its online retail platform "Rakuten Ichiba". It announced the closing of the investigation on the case in December 2021 after Rakuten had proposed to take voluntary measures to eliminate the suspicion of violation of the Japanese Antimonopoly Act.<sup>61</sup>
- e. The Canadian competition authority has an ongoing civil investigation into Amazon's potential restrictive trade practices.<sup>62</sup>
- f. In Germany, action from the Bundeskartellamt led to Amazon amending its terms of business for sellers on marketplaces worldwide after the agency deemed them to be abusive.<sup>63</sup> In two ongoing proceedings, the Bundeskartellamt is examining whether Amazon exercises influence on the pricing of sellers on Amazon Marketplace by means of price control mechanisms and the extent to which agreements between Amazon and brand manufacturers (inter alia Apple), which exclude third-party sellers from selling brand products on Amazon Marketplace, constitute a competition law violation.<sup>64</sup>
- g. In 2012, the US DOJ sued Apple for colluding with other publishers to end e-book retailers' freedom to compete on price.<sup>65</sup>

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<sup>57</sup> The press release can be found [here](#).

<sup>58</sup> [Investigation into Amazon's Marketplace - GOV.UK \(www.gov.uk\)](#).

<sup>59</sup> [Investigation into Amazon's Marketplace - GOV.UK \(www.gov.uk\)](#)

<sup>60</sup> The press release relating to the approval of the commitment plan can be found [here](#).

<sup>61</sup> The JFTC filed a petition for an urgent injunction to the Tokyo District Court to temporarily stop Rakuten's conducts on February 28, 2020 and it withdrew that on March 10, 2020. Afterwards, the JFTC continued its investigation on Rakuten's conducts. The press release can be found [here](#).

<sup>62</sup> The CBC sought information from market participants in August 2020, see [here](#).

<sup>63</sup> The case summary is published [here](#).

<sup>64</sup> The press release can be found [here](#).

<sup>65</sup> The settlement is published [here](#).

- h. In 2023, [the US FTC sued Amazon.com](#), Inc. alleging that the online retail and technology company is a monopolist that uses a set of interlocking anticompetitive and unfair strategies to illegally maintain its monopoly power. The [complaint alleges](#) that Amazon engages in a course of exclusionary conduct that prevents competitors from growing and new competitors from emerging in two markets—the online superstore market that serves shoppers and the market for online marketplace services purchased by sellers. Amazon’s conduct includes anti-discounting measures that punish sellers and deter other online retailers from offering prices lower than Amazon, and conditioning sellers’ ability to obtain “Prime” eligibility for their products on sellers using Amazon’s costly fulfilment service.
    - i. 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.
- 43. Mobile app stores have also been subject to a continuing high level of attention. For example:
  - a. In February 2023, the European Commission held the preliminary view that the contractual restrictions that Apple imposed on app developers, which prevent them from informing iPhone and iPad users of alternative (and often cheaper) music subscription options outside of the app and to effectively choose those (“anti-steering rules”) amount to unfair trading conditions in breach of Article 102 TFEU.<sup>66</sup>
  - b. In June 2022, the CMA published the final report of its year-long market study into mobile ecosystems, which investigated whether Apple’s and Google’s powerful position in relation to the supply of operating systems, app stores and web browsers on mobile devices is resulting in harm to consumers. The CMA concluded that Apple and Google have an effective duopoly on mobile ecosystems that allows them to exercise a stranglehold over these markets.<sup>67</sup> Following on from the study, the CMA has investigated Google’s rules governing app access to listings on its Play Store and recently consulted on potential commitments .<sup>68</sup> The CMA has a separate competition law investigation underway

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<sup>66</sup> The Commission’s investigation is summarised [here](#).

<sup>67</sup> [Mobile ecosystems market study - GOV.UK \(www.gov.uk\)](#).

<sup>68</sup> [Investigation into suspected anti-competitive conduct by Google - GOV.UK \(www.gov.uk\)](#).

in relation to Apple's App Store terms and conditions, which opened in March 2021.<sup>69</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 system that provides services related to the recharging of electric vehicles.<sup>70</sup>
- d. The Australian competition authority states that it is proactively monitoring and investigating allegations of potentially anticompetitive conduct.<sup>71</sup>
- e. The JFTC has investigated Apple's conduct regarding the operation of App Store and announced the closing of the investigation on the 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>72</sup> Apple took these measures globally in March 2022. In addition, the JFTC released a market study report on mobile OS and mobile app distribution in February 2023 and proposed developing a new regulatory framework including the introduction of ex-ante regulation.<sup>73</sup>
- f. In December 2021, the Indian competition authority initiated an investigation against Apple in relation to the alleged mandatory use of Apple's proprietary in-app purchase system (IAP) for the distribution of paid digital content by app developers, the discriminatory application of its App Store guidelines and the access to data collected from users of Apple's downstream competitors.
- g. Pursuant to a recent Executive Order in the US, the US Department of Commerce, in consultation with the US DOJ and the US FTC, issued a report on mobile app ecosystems.<sup>74</sup>
- h. App stores also play an increasing role for infotainment systems in vehicles. In this context, the German Bundeskartellamt, in June 2023, issued a statement of objections against Google regarding Google Automotive Services (GAS), a bundle comprised of Google Maps, Google Play and Google Assistant, in which it comes to the preliminary conclusion that, inter alia, the bundling of different services

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<sup>69</sup> [Investigation into Apple AppStore - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

<sup>70</sup> The press release can be found [here](#).

<sup>71</sup> See Digital platforms services inquiry - Discussion Paper for September 2022 interim report, 18 February 2022, pp 60-61 which can be accessed [here](#).

<sup>72</sup> Press release relating to closing the investigation against Apple can be found [here](#).

<sup>73</sup> The press release can be found [here](#).

<sup>74</sup> The Executive Order, published in 2021, can be found [here](#). [The US Department of Commerce report can be found here](#).



within GAS and advertising revenue share agreements with vehicle manufacturers may pose significant risks to competition.

## Mergers

44. 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.
45. There are widely held concerns about historic underenforcement against digital mergers. In recent years, competition authorities have become more active in challenging, blocking, and remedying proposed mergers that are likely to reduce competition in digital markets. Although the majority of mergers in digital markets are still unconditionally cleared, competition authorities today have a better understanding of how some of these mergers can be harmful to competition.
46. 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, and Meta/Within. In April 2023, the CMA published its final report in Microsoft / Activision Blizzard, concluding that the merger may be expected to result in a substantial lessening of competition in cloud gaming services in the UK.<sup>75</sup> Microsoft appealed the CMA's decision before the Competition Appeal Tribunal (CAT).<sup>76</sup> On 22 August 2023, the CMA confirmed its decision as set out in the Final Report and issued a Final Order prohibiting the transaction. On the same date, the CMA opened an investigation into a restructured proposed acquisition by Microsoft of Activision, which excludes Activision's cloud streaming rights outside of the European Economic Area (EEA). As part of the new proposed acquisition, Activision's global cloud streaming rights (excluding the EEA) for all current and future Activision PC and console games released during the next 15 years will be divested to Ubisoft Entertainment SA (Ubisoft). On 13 October 2023, the CMA decided to grant consent to Microsoft to complete this restructured acquisition. Although the CMA identified limited residual concerns with the new deal, it accepted undertakings from Microsoft to ensure that the terms of the sale of

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<sup>75</sup> [Microsoft / Activision Blizzard merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/microsoft-activision-blizzard-merger-inquiry)

<sup>76</sup> [Microsoft / Activision Blizzard merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/microsoft-activision-blizzard-merger-inquiry)

Activision's rights to Ubisoft are enforceable by the CMA. In May 2023, following an in-depth investigation, the European Commission approved the acquisition of Activision Blizzard by Microsoft subject to remedies in relation to cloud game streaming services.<sup>77</sup> The CMA reviewed completed acquisition of Meta/Giphy and concluded the merger has resulted or may be expected to result in a substantial lessening of competition in the supply of social media services etc. and made a final order of Meta's divestment of Giphy.<sup>78</sup>

47. 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>79</sup> and the US FTC challenged Verisk/Eagleview on a similar theory.<sup>80</sup> The JFTC also reviewed Google/Fitbit, clearing it based on the parties' commitment to behavioural remedies that maintain interoperability and data separation.<sup>81</sup> The European Commission cleared the Meta/Kustomer merger only subject to conditions that guarantee non-discriminatory access to its publicly available APIs.<sup>82</sup> The Bundeskartellamt also reviewed and cleared the merger taking into account these commitments.<sup>83</sup> After a detailed Phase 1 investigation, the CMA cleared the merger.<sup>84</sup> The US FTC's litigation against Facebook (doing business as Meta) continues. The lawsuit, in addition to other forms of relief, seeks the divestment of Instagram and WhatsApp.
48. 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>85</sup> the US FTC challenged CoStar/RentPath<sup>86</sup> and Intercontinental Exchange/Black Knight (top

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<sup>77</sup> The decision can be found under:

[https://ec.europa.eu/competition/mergers/cases1/202330/M\\_10646\\_9311516\\_7443\\_3.pdf](https://ec.europa.eu/competition/mergers/cases1/202330/M_10646_9311516_7443_3.pdf)

<sup>78</sup> Facebook, Inc (now Meta Platforms, Inc) / Giphy, Inc merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>79</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>80</sup> The US FTC's case summary is [here](#).

<sup>81</sup> The findings from the JFTC's review can be found [here](#).

<sup>82</sup> The press release can be found [here](#).

<sup>83</sup> The case summary can be found [here](#).

<sup>84</sup> [Facebook, Inc./ Kustomer, Inc. - GOV.UK \(www.gov.uk\)](#)

<sup>85</sup> The US DOJ case page can be found [here](#)

<sup>86</sup> The US FTC's case summary is accessible [here](#).



mortgage technology loan providers).<sup>87</sup> The CMA recently reviewed Norton/Avast<sup>88</sup>, which concerned antivirus and privacy software and Microsoft/Nuance<sup>89</sup>, which concerned voice recognition and transcription software. The JFTC also reviewed Salesforce/Slack<sup>90</sup>, which concerned CRM (Customer Relationship Management) software and business chat services.

## Section B: Strengthening competition authorities

### Strengthening institutional capacity

49. 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.
50. 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.
51. 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 experts 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:
  - a. In 2019, the German competition authority restructured its General Policy Division to create a dedicated Digital Economy Unit to further support the agency's work e.g. on platforms and data-related issues, while specialist data

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<sup>87</sup> The US FTC's case summary is accessible [here](#). The case settlement is available [here](#).

<sup>88</sup> [NortonLifeLock Inc. / Avast plc merger inquiry - GOV.UK \(www.gov.uk\)](#)

<sup>89</sup> [Microsoft Corporation / Nuance Communications, Inc. merger inquiry - GOV.UK \(www.gov.uk\)](#)

<sup>90</sup> The findings from the JFTC's review can be found [here](#).



analysis also remains in particular in the Chief Economist Team and the IT Forensic Unit.

- b. In January 2020, the French competition authority established a dedicated Digital Economy Unit tasked with developing in-depth expertise on all digital subjects, collaborate on investigations into anticompetitive practices and mergers in the digital economy and contribute to studies on new issues related to developments in digital technology.
- c. The UK competition authority established its Data, Technology and Analytics (DaTA) unit in 2019. The DaTA unit provides expert data and technology advice, data acquisition and data science capabilities, data-driven tool development, behavioural science capabilities, and research, horizon scanning, and case pipeline development.
- d. The Australian competition authority established the Strategic Data Analysis Unit (SDAU), and more recently a Data and Intelligence branch which includes SDAU and also incorporates intelligence analysts and legal technologists.
- e. The Indian competition authority is in the process of setting up a Digital Markets and Data Unit (DMDU) which will act as a specialised interdisciplinary centre of expertise for digital markets.
- f. The US FTC recently added a Chief Technologist and other technology specialists to advise the Chair and Commission on technology matters while the US DOJ hired a noted technology economist as its new Chief Economist. The US FTC also created a new Office of Technology to support the agency across its enforcement and policy work with the skills needed to better understand evolving technologies and market trends.<sup>91</sup>
- g. The Canadian competition authority continued to grow its newest branch, called the Digital Enforcement and Intelligence Branch (DEIB). DEIB is continuing to grow and is becoming more involved in the Bureau’s enforcement and advocacy work.
- h. The JFTC hired new staff members with tech background as “Digital Analysts”, who provide advice on JFTC’s various initiatives related to the digital field, such as market studies.
- i. The Korean competition authority improved the organization, staffing, and equipment to strengthen capabilities for investigating digital evidence and has established a digital forensic center at Director for General Investigation. Digital

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<sup>91</sup> <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-launches-new-office-technology-bolster-agencys-work>

forensic experts conduct on-site investigations and train KFTC employees, contributing to enhancing digital evidence acquisition and analysis capabilities.

- j. In January 2023, the AGCM introduced a new organizational structure, by establishing a Directorate focusing on antitrust investigations concerning digital platforms and one on market studies, in order to strengthen its capacity building activities in the digital economy. Moreover, the AGCM envisages to recruit additional digital experts in 2023-2024.
52. 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 has conducted research into the effects of pricing algorithms on competition, developed in-house web-scraping capabilities and is working on 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. It is also implementing a tool aimed at detecting collusion in public procurements and is involved in the second phase of a project which aims to improve the prototype tool assessing corruption risk factors in firms' ownership structure (risks of collusion, corruption and money laundering in the European single market).<sup>92</sup> Similar tools have been developed by the Canadian competition authority's new DEIB team, the South African competition authority and the US DOJ as part of a Data Analytics Project which it initiated. The CMA's DaTA unit is helping its Digital Markets Unit, currently operating in shadow form, to horizon-scan and identify the potential impact of new technologies and business practices on dynamics in digital markets.

### **Building institutional knowledge**

53. 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

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<sup>92</sup> <https://www.transcrime.it/en/datacros-ii-kick-off-meeting/>

programmes. Seen as a whole, these approaches help ensure that competition authorities are equipped to understand and address issues as they arise.

54. The past several years have 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. The JFTC has conducted a series of market studies and published reports on business-to-business transactions in online retail platforms and app stores<sup>93</sup>, on digital advertising<sup>94</sup>, on public procurement of IT systems, on fintech-based services, on subcontracting transactions in software services, on mobile OS and mobile app distribution<sup>95</sup>, and on news content distribution<sup>96</sup>. It has also begun a market study on smart TVs and OTT platforms.<sup>97</sup>
  - b. The French competition authority published a market study on the competitive functioning of the cloud sector in June 2023<sup>98</sup>. In 2023, the US FTC launched an inquiry into business practices by cloud computing providers. The request for comment asked for information about the competitive dynamics of cloud computing, the extent to which certain segments of the economy are reliant on cloud service providers, and security risks. Similarly, in 2022, the Korean competition authority completed a survey on the cloud market. Also, the JFTC already published a report on cloud services.<sup>99</sup>
  - 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 final report on the findings was published in January 2022.<sup>100</sup>
  - d. At the end of 2022, the Canadian competition authority completed a two-year market study into Canada’s digital health care sector. This report makes recommendations to Canadian governments and policymakers on ways to

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<sup>93</sup> Link to report on Business-to-Business transactions on online retail platform and app store can be found [here](#).

<sup>94</sup> Final report regarding digital advertising can be found [here](#).

<sup>95</sup> Market Study Report on Mobile OS and Mobile App Distribution can be found [here](#).

<sup>96</sup> The press release can be found [here](#).

<sup>97</sup> In June 2022, the JFTC made a policy statement that it would use the latest knowledge and analysis on digital markets obtained through such fact-finding surveys for enforcement of the AMA.

<sup>98</sup> See the *Autorité’s Opinion 23-A-08 of 29 June 2023* on competition in the cloud sector.

<sup>99</sup> Final report regarding cloud services is available [here](#).

<sup>100</sup> The European Commission’s preliminary report can be found [here](#).

improve how health care providers work within Canada’s public health system.<sup>101</sup> By increasing the use of digital technologies, health care providers can leverage the benefits of competition. This will accelerate innovation and create greater choice for patients.

- e. The South African competition authority launched its online intermediation platforms market inquiry in May 2021 and final report was launched on 31 July 2023. The inquiry focused on digital platforms in the areas of e-Commerce marketplaces, online classifieds, software application stores, travel and accommodation aggregators, insurance comparator sites, and food delivery services platforms. As a route to these digital platforms, the Inquiry also focused on google search.<sup>102</sup>
  - f. In addition to its market study into mobile ecosystems discussed above, in January 2022, the CMA also launched a market study into music and streaming services and published the final report in January 2023.<sup>103</sup> The CMA also recently published an Initial Review into AI Foundation Models.<sup>104</sup>
55. 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. For example:
- a. In 2019, the Australian competition authority concluded an 18-month Digital Platforms Inquiry,<sup>105</sup> which considered 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. In 2020, the Australian Government directed the ACCC to undertake a 5 year Digital Platform Services Inquiry (DPSI), and provide 6-monthly reports to the Australian Government.<sup>106</sup> As of August 2023, the ACCC has published 6 reports under the DPSI which have examined

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<sup>101</sup> The first report was released in June 2022 and can be found [here](#). The second report was released in October 2022 and can be found [here](#). The third report was released in November 2022 and can be found [here](#).

<sup>102</sup> A provisional report released in July 2022 can be found [here](#). Final report was released on 31 July 2023 can be found here ([Online Intermediation Platforms Market Inquiry Final Report Launch – The Competition Commission \(compcom.co.za\)](#)).

<sup>103</sup> [Music and streaming market study - GOV.UK \(www.gov.uk\)](#)

<sup>104</sup> [AI Foundation Models: initial review - GOV.UK \(www.gov.uk\)](#)

<sup>105</sup> The Digital Platform Inquiry is published [here](#).

<sup>106</sup> See background on the DPSI [here](#).

digital platform services including online private messaging services, app marketplaces, general online retail marketplaces and social media.<sup>107</sup> In the fifth report of the DPSI, the ACCC recommended a new regulatory regime to address competition and consumer issues in digital platform markets,<sup>108</sup> which is currently being considered by the Australian Government.

- b. Similarly, a key output of the CMA’s online platform and digital advertising market study was the recommendation to the UK Government that a new pro-competition ex-ante regulatory regime to proactively shape the behaviour of the most powerful digital firms and to prevent harms arising in the first place. In May 2022, the UK government set out in detail its intentions for the pro-competition regime.<sup>109</sup> The UK government introduced the Digital Markets Competition and Consumers Bill in the UK Parliament in April 2023.<sup>110</sup> The Bill also contains reforms to the UK’s wider competition and consumer laws.

56. 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. The ACCC also recently launched Digital and Data Learning Pathways for its employees, aimed at upskilling all employees in the use of data and digital tools and techniques.

57. Competition authorities are also focused on building institutional knowledge by engaging with external and technical experts:

- 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

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<sup>107</sup> The 7<sup>th</sup> DPSI interim report examining the expanding ecosystems of digital platform providers will be provided to the Australian Government by the end of September and is expected to be published soon after.

<sup>108</sup> ACCC, [Digital platform services inquiry, Interim report No. 5 – Regulatory reform, 2022](#).

<sup>109</sup> [A new pro-competition regime for digital markets - government response to consultation - GOV.UK \(www.gov.uk\)](#).

<sup>110</sup> [Digital Markets, Competition and Consumers Bill - Parliamentary Bills - UK Parliament](#)



- enforcement, and another in 2020 which focused on venture capital, highlighting what antitrust enforcers can learn about how to identify nascent competitors.
- b. The JFTC 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 CCSA 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>111</sup>
  - e. In June 2022, the CMA held its inaugural Data, Technology and Analytics Conference,<sup>112</sup> which brought together world-renowned experts on competition policy, digital technologies, and data and analytics. The conference covered topics including interoperability, privacy, key technologies and digital trends, and the digital transformation of competition authorities. In addition, the CMA has appointed nine Digital Experts as independent advisors to provide expert advice to the CMA on its growing programme of digital work.<sup>113</sup>
58. 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

59. The updated contributions to the new edition of the compendium highlight that reforms to address competition concerns in digital markets were enacted, pursued further or new proposals initiated in particular 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

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<sup>111</sup> Published in April 2019, the EU Special Adviser's Report on Competition Policy for the Digital Era can be found [here](#).

<sup>112</sup> The conference website can be found [here](#).

<sup>113</sup> [Biographies of the CMA's independent digital experts - GOV.UK \(www.gov.uk\)](#)

reforms and reform proposals vary in content and scope, most facilitate easier or faster agency intervention or contemplate new regulatory regimes.

60. 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>114</sup> the Stigler Committee on Digital Platforms and the Judiciary Antitrust Subcommittee's Investigation of Competition in Digital Markets in the US,<sup>115,116</sup> the Consultation on the Digital Services Act package<sup>117</sup> and the report by the German Commission 'Competition Law 4.0',<sup>118</sup> as well as the European Commission's Staff Working Document on the Evaluation of procedural and jurisdictional aspects of EU merger control<sup>119</sup>, in addition to significant analysis in competition authorities' market studies.

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

61. Whilst many of the reforms are more recent and ongoing, some jurisdictions have been engaged in legislative and policy reforms for years. The German legislator, for example, brought in changes to the 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.
62. 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 reforms which have been adopted recently include:

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<sup>114</sup> Published in March 2019, the Report of the Digital Competition Expert Panel can be found [here](#).

<sup>115</sup> Published in September 2019, the Stigler Committee on Digital Platforms report can be found [here](#).

<sup>116</sup> Published in October 2020, the US Subcommittee on Antitrust's Investigation of Competition in Digital Markets can be found [here](#).

<sup>117</sup> Consultation on the Digital Services Act package conducted from June to September 2020 can be found [here](#):

<sup>118</sup> Published in September 2019, the Report by the Commission 'Competition Law 4.0' can be found [here](#).

<sup>119</sup> Published on 26 March 2021, the European Commission's Staff Working Document can be found [here](#).

- a. The European Commission’s **Digital Markets Act** which entered into force on 1 November 2022 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>120</sup> Together with the Digital Services Act<sup>121</sup> which came into force on 16 November 2022 – the Digital Markets Act sets the regulatory framework applicable to digital giants and the broader digital ecosystem throughout the 27 countries of the European Union. Moreover, in June 2022 the European Commission adopted a new Vertical Block Exemption Regulation and Vertical Guidelines, dealing, inter alia, with online distribution.<sup>122</sup>
- b. The 10th Amendment to the **German Act against Restraints of Competition** (German Competition Act, GWB) entered into force in early 2021 and 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.<sup>123</sup> As of September 2023, Google, Meta, Amazon and Apple have been declared by the Bundeskartellamt to be of paramount significance for competition across markets while a proceeding against Microsoft is ongoing.<sup>124</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, app stores, and digital advertising.<sup>125</sup>
- d. In Italy, a new law passed by Parliament in August 2022 introduced new tools to tackle the bargaining power of digital platforms. The existing provisions concerning the **abuse of economic dependence** are amended to account for the

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<sup>120</sup> The Digital Markets Act can be found [here](#) and the accompanying press release can be found [here](#).

<sup>121</sup> The Digital Service Act can be found [here](#). On 25 April 2023, the Commission designated 17 Very Large Online Platforms and 2 Very Large Online Search Engines. The designated entities are having 4 months to comply with the obligations under the DSA, which includes carrying out and providing the first annual risk assessment exercise.

<sup>122</sup> The accompanying press release can be found [here](#).

<sup>123</sup> The amendments can be found [here](#).

<sup>124</sup> The press releases can be found [here](#) (Google), [here](#) (Meta), [here](#) (Amazon), [here](#) (Apple) and [here](#) (Microsoft).

<sup>125</sup> Further detail is available [here](#).

intermediation power of digital platforms.<sup>126</sup> In particular, the law introduced a rebuttable presumption of economic dependence for those operators dealing with digital platforms offering intermediation services when the latter represents a key gateway in reaching end users and/or suppliers. The AGCM applied this new provision for the first time in the media sector against Meta Platforms Inc. in April 2023 (see subsection “Impact on media” of Section D below).

- e. In France, the ordinance transposing Directive (EU) 2019/1 (the ECN+ Directive) was published in May 2021.<sup>127</sup> This new legal framework has provided the Autorité with powerful new tools adapted to new enforcement challenges, particularly those raised by the development of large platforms. The Autorité has now the possibility, *inter alia*, to set its own priorities, to file an action on its own initiative to impose interim measures and to issue structural injunctions. In addition, the “DDADUE Law” of December 2020 modernized the Autorité’s internal procedures.
  - f. In Canada, important amendments to the Competition Act became law in 2022. These amendments are strengthening the Bureau’s ability to protect Canadian consumers, businesses and workers from anti-competitive conduct.<sup>128</sup> For example, new considerations regarding digital commerce may be taken into account by the Competition Tribunal. These include network effects, non-price competition, and privacy. Also, drip pricing has been added as a deceptive marketing practice.
63. In addition, in a number of jurisdictions reform proposals regarding competition in digital markets are being discussed:
- a. In March 2023, the Canadian Competition Authority presented its [submission](#) to the Government of Canada’s ongoing [consultation on the future of competition policy in Canada](#). The submission included over 50 recommendations and focused on areas where the Competition Authority believes that reform is required, including digital competition issues.
  - b. In May 2022, the UK government set out its intentions for an *ex-ante* pro-competition regime, which would be enforced by the Digital Markets Unit within

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<sup>126</sup> See section 1.3 of the AGCM annual report for the OECD, available here ([https://one.oecd.org/document/DAF/COMP/AR\(2023\)19/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2023)19/en/pdf)).

<sup>127</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”).

<sup>128</sup> The amendments can be found [here](#).

the CMA. This regime would apply to firms that are designated as having strategic market status. These firms would be required to comply with enforceable conduct requirements to prevent them from taking advantage of their powerful position and may be subject to pro-competitive interventions such as data access or interoperability requirements. In addition, the government has announced it will take forward broader reforms to the CMA's existing competition and consumer powers, to ensure they are better adapted for the digital age.<sup>129</sup> The Digital Markets Competition and Consumers Bill was introduced in the UK Parliament in April 2023 which will put these reforms into law.<sup>130</sup>

- c. 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>131</sup> In March 2022, the United States Department of Justice issued a letter in support of one of the bills, the American Innovation and Choice Online Act, which would prohibit discriminatory conduct by dominant platforms.<sup>132</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>133</sup>
- d. The European Commission has launched an evaluation of Regulation 1/2003, i.e. its antitrust procedural regulation, to ensure that it is fit for purpose as regards enforcement in the digital age.<sup>134</sup>
- e. 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

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<sup>129</sup> [Reforming competition and consumer policy: government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/reforming-competition-and-consumer-policy).

<sup>130</sup> [Digital Markets, Competition and Consumers Bill - Parliamentary Bills - UK Parliament](https://www.parliament.uk/business/bills/2023/digital-markets-competition-and-consumers-bill)

<sup>131</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>132</sup> The letter can be found [here](#).

<sup>133</sup> The Executive Order, published in 2021, can be found [here](#).

<sup>134</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4194](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4194)

level with a mechanism that would allow quick intervention when harmful conduct occurs by 'structuring' operators i.e. identified platforms.<sup>135</sup>

- f. In Korea, the National Assembly is discussing to legislate the 'Act on Fairness in Online Platform Intermediary Transaction (OPA)'. The OPA focuses on promoting transparency and fairness of transactions in online platforms as well as mutually beneficial cooperation between platforms and online stores.
  - g. In Japan, the Digital Market Competition Council is engaged in discussions on the Competition Assessment of the Mobile Ecosystem and the development of rules in the digital field<sup>136</sup>. The JFTC contributes to the discussions by making policy proposals based on the market study report on mobile OS and mobile app distribution<sup>137</sup>.
  - h. The report of the South African competition authority on the inquiry mentioned above has provisionally identified the potential need for proactive regulation or guidelines. The proposal, for example, includes the prohibition of certain conduct which has an adverse effect on intermediation platform competition.
  - i. The ACCC's fifth report in its ongoing Digital Platforms Service Inquiry recommended a range of new measures to address harms from digital platforms to Australian consumers, small businesses and competition.<sup>138</sup> In addition to recommending new consumer and competition measures for digital platforms, the report also reiterates the ACCC's support for economy-wide reforms to consumer law such as a prohibition on unfair trading practices. The Australian Government has concluded its consultation on the ACCC's recommendations, and the ACCC is awaiting the Government's response.
64. 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 (for instance the use by the European Commission of interim measures in October 2019 against Broadcom), 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

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<sup>135</sup>The Autorité's Contribution to the Debate on Competition Policy and Digital Challenges can be found [here](#).

<sup>136</sup> Final Report Summary of Competition Assessment of the Mobile Ecosystem, published on June 16, 2023, can be found [here](#).

<sup>137</sup> Market Study Report on Mobile OS and Mobile App Distribution can be found [here](#).

<sup>138</sup> ACCC, [Digital platform services inquiry, Interim report No. 5 – Regulatory reform](#), 2022.

the experiences and learnings in other jurisdictions to determine whether similar reforms would be appropriate.

## New approaches in merger control and reforms

65. 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:
- a. Germany introduced new legislation to review transactions based on transaction value back in 2017. In 2022, the Federal Ministry for Economic Affairs and Climate Action published a competition policy agenda which indicated that, among other objectives, the Ministry is in favour of strengthening the Bundeskartellamt in the field of merger control.<sup>139</sup>
  - b. The European Commission announced in its guidance on Article 22 of the EU Merger Regulation that it will no longer discourage referrals from EU Member States for transactions falling outside the referring Member State's national merger control thresholds.<sup>140 141 142</sup> In 2022, the General Court of the EU confirmed this approach.<sup>143</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. In June 2022, the JFTC made a policy statement that it would strengthen enforcement on transactions especially in the digital

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<sup>139</sup> The competition policy agenda of the Federal Ministry for Economic Affairs and Climate Action up to 2025 is available [here](#).

<sup>140</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>141</sup> In addition, the proposed Digital Markets Act would require designated gatekeepers to inform the European Commission of planned acquisitions or mergers.

<sup>142</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>143</sup> Judgment of 13.07.2022, Case T-227/21, Illumina v. Commission, can be found [here](#).

market in several ways. These include requesting firms to submit their internal documents from the early stage of a review and seeking information and comments from third parties related to a review.

- d. In Italy, the amendments to the Italian competition law also introduced a regime for reviewing transactions falling below the applicable thresholds in order to capture acquisitions of nascent competitors. In January 2023, the AGCM adopted a notice addressing the procedural aspects of the new regime, clarifying the substantial rules and allowing for voluntary notifications<sup>144</sup>; moreover, the AGCM is in the process of establishing a monitoring system for merger transactions.
- e. 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.
- f. 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>145</sup>
- g. In July 2023, the US FTC and the US DOJ released new draft U.S. merger guidelines<sup>146</sup> following a comprehensive review. The review evaluated how to account for certain features of digital markets such as zero-price dynamics, the competitive significance of data, network externalities, and platform merger analysis.
- h. Reforms to facilitate competition authorities' ability to prevent anticompetitive mergers, which would apply economy-wide, are under consideration in Australia.<sup>147</sup>
- i. In the UK, the Bill to introduce a new ex ante pro-competition regime for digital markets include reforms in relation to merger control. The pro-competition regime will apply to firms that the CMA's Digital Markets Unit designates as having strategic market status. Firms designated as having strategic market status will have to report their most significant transactions prior to completion.<sup>148</sup>

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<sup>144</sup> For an in-depth description of the new regime and the AGCM notice, see section 1.1 of the AGCM annual report 2022 for OECD, available here:

[https://one.oecd.org/document/DAF/COMP/AR\(2023\)19/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2023)19/en/pdf)

<sup>145</sup> The US FTC's report can be found [here](#).

<sup>146</sup> The draft merger guidelines can be found [here](#).

<sup>147</sup> Protecting and promoting competition in Australia – [Speech transcript](#).

<sup>148</sup> [A new pro-competition regime for digital markets - government response to consultation - GOV.UK \(www.gov.uk\)](#)





66. These ongoing changes and proposals highlight the importance of policy makers 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**

67. 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**

68. 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.
69. 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>149</sup> In August 2022, the Australian Federal Court ordered Google to pay \$ 60 million in penalties for making misleading representations to consumers.

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<sup>149</sup> A summary is published [here](#).

<sup>150</sup> The ACCC’s media release is [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>151</sup> In November 2021, the AGCM fined Apple and Google for some unfair and aggressive commercial practices related to the utilization of user data, such as the omission of information about the collection and use of personal data and the set-up of an opt-in as default option for data sharing consent<sup>152</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>153</sup>
- d. In India, the CCI directed an investigation in relation to the updated privacy policy and terms of service by WhatsApp whereby the users have to accept the unilaterally dictated terms and conditions in order to retain their WhatsApp account information.
- e. In Germany, the Bundeskartellamt imposed extensive restrictions on Facebook regarding the processing of user data.<sup>154</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 data protection authorities to clarify the data protection issues involved when assessing Facebook's behaviour under its national competition law.
- f. The US FTC has an ongoing rulemaking proceeding on digital commercial surveillance, the business of collecting, analyzing, and profiting from information about people. The 2022 notice invited public comment and seeks to explore the harm stemming from digital commercial surveillance and whether new rules are needed to protect people's privacy and information.<sup>155</sup> In 2023, the US FTC took action against Amazon for duping consumers into its Prime subscription program<sup>156</sup> without their consent and making it difficult to cancel their subscription. The US FTC alleges that Amazon violated the US FTC Act and the

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<sup>151</sup> A summary is published [here](#).

<sup>152</sup> See cases nos. PS11147-PS11150, press release of 26 November 2021, <https://en.agcm.it/en/media/press-releases/2021/11/PS11147-PS11150>

<sup>153</sup> A summary is published [here](#)

<sup>154</sup> The BKartA's summary can be found [here](#).

<sup>155</sup> <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-explores-rules-cracking-down-commercial-surveillance-lax-data-security-practices>.

<sup>156</sup> <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their>

Restore Online Shoppers' Confidence Act by using "dark patterns" to trick consumers into enrolling in auto-renew Prime subscriptions.

70. 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 JFTC 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>157</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>158</sup> The three authorities advocated for the establishment of a coherent and consistent framework on data collection and utilisation, which enhances transparency by reducing information asymmetries and facilitates data portability through the adoption of open and interoperable standards.
  - c. The Korean government has launched an inter-ministerial consultative body, including different ministries and enforcement agencies, to deal with issues related to digital platforms. This body enables agencies to increase synergies between policies across government agencies.
  - d. In the UK, the CMA recently published a joint statement with Ofcom, the communications regulator, setting out the authorities' shared views on the relationship between competition and online safety in digital markets and how the two authorities will take account of this as they continue to collaborate and deliver coherent regulation in digital markets.<sup>159</sup> The CMA has also 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>160</sup>

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<sup>157</sup> Further detail is available [here](#)

<sup>158</sup> A summary of the report is available [here](#)

<sup>159</sup> [Online safety and competition in digital markets: a joint statement between the CMA and Ofcom \(publishing.service.gov.uk\)](#).

<sup>160</sup> The statement is published [here](#).

- e. In France, the Autorité, within the context of the investigation of practices implemented by Apple in relation with its iOS 14 operating system, solicited in 2020 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. Both agencies have maintained a very close and fruitful dialogue in 2022, and these continuous exchanges have also translated into cross-agency trainings (which focused on the functioning of each institution and their respective legal framework) as well as workshops on topics of common interest.
  - f. The US FTC recently adopted a policy statement on enforcement related to gig work that recognises both consumer protection and competition issues facing gig workers.<sup>161</sup> The statement notes that an integrated approach to investigating unfair, deceptive, and anticompetitive conduct is especially appropriate for the gig economy, where law violations often have cross-cutting causes and effects. The statement also points out that markets populated by gig companies are often concentrated, resulting in reduced choice for workers, customers, and businesses.
71. The links between data protection, privacy, consumer protection and competition also become increasingly evident in some of the recent legislative reforms. For example, the Digital Markets Act makes explicit references to the General Data Protection Regulation (GDPR) in some of its obligations for gatekeepers.

## Impact on media

72. 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>162</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.

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<sup>161</sup> The statement can be found [here](#).

<sup>162</sup> Parliament of Australia, [Treasury Laws Amendment \(News media and digital platforms mandatory bargaining code\) Bill 2021](#), 25 February 2021

- b. Similarly, in France, in the course of the investigation into the merits of the “related rights” case, the Autorité accepted in 2022 Google's commitments to create a framework for negotiating and sharing the information necessary for a transparent assessment of the remuneration for the reuse of publishers and press agencies’ protected content.<sup>163</sup> Prior to this decision, in the same case, the Autorité imposed in 2021 a € 500 million fine<sup>164</sup> on Google for non-compliance with several injunctions issued in the context of its interim measures decision of 2020, which ordered Google to negotiate with publishers and press agencies regarding the remuneration due to them and their related rights, pending the decision on the merits.<sup>165</sup>
- c. In Italy, the AGCM opened an investigation against Meta Platforms Inc. for alleged breach of the new provision on abuse of economic dependence in digital markets, by interrupting negotiations with SIAE, the largest collecting society for licensing musical rights, for the use of SIAE artists’ music and subsequently removing their musical content from its platforms. The AGCM adopted interim measures, by forcing Meta Platforms Inc. to resume negotiations with SIAE and reinsert the artists’ work back on Meta’s platforms<sup>166</sup>.
- d. The JFTC also made clear that platforms need to be more transparent with publishers about their remuneration. It also clarified, in its Compilation of Consultation Cases on the Antimonopoly Act (FY2021) published in June 2022, some cases where Japan’s competition law allows newspaper publishers to collectively demand online news portal platforms, including a case where they ask to disclose data necessary to examine remuneration for their news articles. It also published a market study report on news content distribution in September 2023<sup>167</sup>.
- e. In January 2022, the Indian competition authority initiated an investigation against Google in relation to alleged unilateral and non-transparent determination and sharing of online advertisement revenues with news

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<sup>163</sup> See the Autorité’s [Decision 22-D-13 of 21 June 2022](#) regarding practices implemented by Google in the press sector.

<sup>164</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>165</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>166</sup> See press release here: <https://en.agcm.it/en/media/press-releases/2023/4/A559->

<sup>167</sup> The press release is available [here](#).

publishers. It was also alleged that Google unilaterally decided not to pay the publishers for the snippets used by Google in its search engine results.

- f. In the UK, the CMA and Ofcom, the communications regulator, published joint advice to government in May 2022 on how a code 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>168</sup>
- g. Finally, highlighting the pace of change in digital markets, the German competition authority in December 2022 completed a proceeding concerning the Google News Showcase service.<sup>169</sup> During the course of the proceeding, Google changed its contractual practices, addressing concerns of the authority that the contractual terms offered are to the detriment of publishers. Google also abandoned plans to integrate Showcase into the general Google search service and is working towards providing non-discriminatory access to the platform.<sup>170</sup>

## Domestic and international collaboration with non-competition authorities

### Domestic collaboration

- 73. G7 and guest competition authorities are engaging regularly with other domestic regulators and policy makers 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>171</sup>
- 74. The Canadian competition authority highlights that it cooperates with domestic law enforcement partners in its case work. They also provide competition-related input to regulators and policy makers at all levels of government in the context of its

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<sup>168</sup> [Advice to DCMS on how a code of conduct could apply to platforms and content providers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/advice-to-dcms-on-how-a-code-of-conduct-could-apply-to-platforms-and-content-providers).

<sup>169</sup> The press release is available [here](#).

<sup>170</sup> A case summary is available [here](#).

<sup>171</sup> See the *Autorité's Decision 21-D-07 of 17 March, 2021* in the sector of mobile applications advertising on iOS.

advocacy work. In Australia, the ACCC regularly engages with other government agencies through formal Memorandums of Understanding (MoUs) allowing improved information sharing. In Italy, an intergovernmental group on Fintech was established in 2018 by the Economic Ministry in order to favour the development of innovative business models and services based on digital technologies; it includes several agencies such as the AGCM, the financial and data protection regulators. In Germany, the Bundeskartellamt cooperates with the Federal Office for Information Security (BSI), the federal cyber security authority which ensures secure digitalisation, with a particular focus in the area of digital consumer protection.<sup>172</sup> One example of the collaboration of the two authorities is the sector inquiry into messenger and video services by the Bundeskartellamt that consulted with the BSI during the process of compiling a checklist outlining the essential criteria which ensure data security and compliance with the law.<sup>173</sup>

75. Competition authorities are also building new structures to ensure ongoing collaboration and cooperation. For example, in 2020 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>174</sup> In 2022-2023, the DRCF's focus is on protecting children online, promoting competition and privacy in online advertising, supporting improvements in algorithmic transparency, and enabling innovation.<sup>175</sup> In Australia, the Digital Platforms Regulators Forum (DP-REG) was launched in March 2022 to provide more formal engagement between the ACCC, the Australian Communications and Media Authority (ACMA), the Office of the Australian Information Commissioner, and the Office of the eSafety Commissioner.<sup>176</sup> In June 2023, the Competition Bureau, the Canadian Radio Television and Telecommunications Commission and the Office of the Privacy Commissioner formed the Canadian Digital Regulators Forum.<sup>177</sup> The forum will support the exchange best practices, conduct research, and collaborate on matters of common interest like artificial intelligence and data portability. This partnership will strengthen the work of all three agencies as they keep pace with rapid changes in the digital economy. Furthermore, the CMA recently established International Network for Digital

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<sup>172</sup> A related press release is available [here](#).

<sup>173</sup> A press release on the completion of the sector inquiry into messenger and video services is available [here](#).

<sup>174</sup> Further information is available on the DRCF's webpage [here](#).

<sup>175</sup> [Digital Regulation Cooperation Forum workplan 2022 to 2023 – GOV.UK \(www.gov.uk\)](#).

<sup>176</sup> See the ACCC's media release [here](#).

<sup>177</sup> The CBC's news release can be found [here](#)

Regulation Cooperation (INDRC) along with Australia, Ireland and The Netherlands. 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 is also currently exploring its working arrangements with the newly formed Information Regulator of 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).

76. 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 by continuing to support work to implement open banking in Canada. Similarly, the French competition authority conducted a sector-specific inquiry on the level of competition in new technologies applied to financial activities.

### International collaboration

77. 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.
78. At EU level, the national competition authorities of all EU member states together with the European Commission form the European Competition Network (ECN).<sup>178</sup> Through the ECN, the competition authorities inform each other of proposed

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<sup>178</sup> For more information on the ECN, see [here](#).





decisions and take on board comments from other competition authorities. In this way, the ECN allows the competition authorities to pool their experience and identify best practices. In addition, the Digital Markets Act establishes a high level group for digital markets expanding cooperation to the European regulators for electronic communications, data protection, consumer protection, and audiovisual media.

79. 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 February 2023, the AGCM and the ACCC signed a Memorandum of Understanding, paving the way for new opportunities to cooperate on investigations and share experiences and best practices, particularly with respect to the digital economy<sup>179</sup>. In terms of joint work, in 2019, the German and French competition authorities produced a report on algorithms, described above.
80. The CCSA together with the competition authorities of Egypt, Kenya, Nigeria and Mauritius, launched a digital markets enforcement initiative, given the greater shared challenges that digital markets pose for African countries. The goal is a closer co-operation in order to share knowledge, develop effective strategies in digital markets and provide a stronger united front in dealing with global tech companies.<sup>180</sup>
81. Authorities also continue to work together through existing international competition and consumer networks such as the International Competition Network (ICN), the Organisation for Economic Co-operation and Development (OECD) Committees on Competition and Consumer Policy, the UN Trade and Development Competition and Consumer Policy Branch, and the International Consumer Protection and Enforcement Network (ICPEN).
  - a. The ICN, a global network of 143 competition agencies dedicated to competition policy, recognized the challenges posed by digitalization early. The ICN addressed key digital issues including developing normative guidance on assessing dominance in digital markets, and has also focused resources on multi-disciplinary issues such as its multiyear project on the intersection between competition, consumer protection, and privacy which is coordinated by the competition authorities of Australia, Canada, US (FTC) and Italy. It has also increased its

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<sup>179</sup> See press release here: <https://www.accc.gov.au/about-us/media/media-updates/accc-and-italys-competition-authority-strengthen-cooperation-with-new-mou>

<sup>180</sup> The accompanying press release can be found [here](#).



- coordination and focus on digital matters through the creation of the role of an ICN Vice Chair for digital co-ordination (Rod Sims, ACCC) and later a Vice Chair on digital economy issues (represented by US FTC Chair Lina Khan) and the establishment of a new ICN forum for agency technologists and digital experts.
- 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.
82. 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.

## V. Conclusions and next steps

83. As this update to the compendium shows, competition authorities continue to dedicate 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. Many agencies have opened additional investigations, completed or conducted new studies and brought new enforcement actions to address concerns about the exercise of market power of platforms.
84. 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.
85. These efforts are also important for competition authorities to understand emerging technologies, such as artificial intelligence, blockchain and metaverse. While this type of technologies can set the stage for a fresh stream of competition, the rapid development and proliferation of them may present risks and harms to competition. The competition authorities are using their enhanced skillsets to scan the horizon for early warning signs of conduct that might tip markets or reduce contestability and identify key technologies and issues that may raise competition concerns in the future.
86. Also, a number of legislators of the G7 and guest countries have already recently introduced different reforms to address competition issues in digital markets and many other jurisdictions concrete reform proposals are being discussed. 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. Whether the tools at the disposal of competition authorities are adequate, however, is a question which will remain acute. On the one hand, it is important that new tools are future-proof and that they remain up to the task also in light of new challenges.<sup>181</sup> On the other hand, if the application of the promising new regulatory and competition law approaches should

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<sup>181</sup> In this regard, it is noteworthy that at the EU level Art. 12 of the Digital Markets Act allows for obligations for gatekeepers to be updated to a certain degree, “in order to address practices that limit the contestability of core platform services or that are unfair in the same way as the practices addressed by the [current] obligations”. Moreover, Art. 53 stipulates a regular review of the DMA.



still prove to have only a limited effect on the competitive process in certain areas, the option to allow for more comprehensive interventions is likely to remain part of the discussion.<sup>182</sup>

87. 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.
88. The following section includes the submissions from each of the competition authorities that contributed to the compendium.

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<sup>182</sup> The Bundeskartellamt's sector inquiry into online advertising contains some discussions along these lines, see p. 9 f. of the executive summary which can be accessed [here](#).



## VI. Submissions

### Canada - Competition Bureau 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 (Bureau) has active investigations against large digital platforms related to conduct in the digital economy. For example, the Bureau is investigating if Google engaged in practices that harm competition in the online display advertising industry in Canada.

Additionally, on June 29, 2023, the Bureau received a Federal Court order requiring Meta Platforms to provide information relevant to the Bureau's ongoing investigation into Amazon. The Bureau is investigating claims made by Amazon about product reviews and star ratings on Amazon.ca and Amazon's mobile application to determine if Amazon's marketing practices raise concerns under the deceptive marketing provisions of the *Competition Act*.

The Bureau also has other investigations in digital markets outside of large tech platforms. For example, the Bureau is investigating data sharing practices of a real estate agent trade association.

Many of the Bureau's investigations involve e-commerce. In May 2023, the Bureau took legal action against Cineplex for "drip-pricing". On its website and mobile app, Cineplex advertises movie tickets at a lower price than what many consumers have to pay. This is because Cineplex adds an additional \$1.50 CAD online booking fee. The Bureau alleges that Cineplex made nearly \$17 million CAD in revenues in the nine months since the fee was added.

The Bureau also has an active investigation against the Dufresne Group, Inc. and its affiliates for using urgency claims online about the date sales would end. These claims may be false or misleading.



## Promotion and Advocacy

In addition to enforcement, the Bureau supports public education efforts. The Bureau publishes the “Deceptive Marketing Practices Digest” series and other materials to help businesses comply with the law. The most recent issue covers common marketing practices used in the online marketplace. This includes scarcity cues and drip pricing. Past issues have focused on:

- online disclosures
- influencer marketing
- online reviews, and
- the collection of consumer data in exchange for “free” online products and services.

At the end of 2022, the Bureau completed a [two-year market study into Canada’s digital health care sector](#). The study aims to understand barriers to innovation and choice.

- The [first report](#) focuses on health data and information. Along with other recommendations to improve competition, we recommended making it easier to securely access and share personal health information.
- The [second report](#) focuses on public procurement processes that provinces and territories use to buy health care products and services to treat patients. We identified important barriers that prevent innovative suppliers from competing for public contracts and made recommendations so that public procurement policy helps foster greater competition and innovation.
- The [third and final report](#) examines how pro-competitive policies can foster innovation and bring greater choice and access to digital health care services for Canadians. To improve competition, we recommended helping health care providers use the best available digital technologies. This will lead to lower costs, better health care services, and improved patient outcomes.

## Data Portability

The Bureau is championing the benefits of data portability for competition and consumers. This includes conducting experimental research to better understand and quantify the value that data portability can bring to Canadians.

**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).**

#### Digital Enforcement and Intelligence Branch

In 2023, the Bureau continued to grow the new Digital Enforcement and Intelligence Branch (DEIB). DEIB is a centre of expertise on digital business practices and technologies. It also provides specialized functions such as centralized intelligence. It aims to be an early warning system for potential competition issues at all stages, from providing early intelligence to monitoring remedies after investigations.

DEIB provides strategic advice to teams working on civil and criminal files. It provides information on how businesses use data and technology, proactive intelligence, and the effectiveness of remedies. DEIB's work helps the Bureau better understand how businesses may exploit consumers. The team is increasing staff numbers and becoming more and more involved in the Bureau's enforcement and advocacy work.

DEIB comprises six areas of expertise:

1. **Data and Analytics:** uses advanced analytics and data science to build tools to make the Bureau more efficient and add new capabilities to investigations and promotion work.
2. **Technology and Tool Insights:** focuses on understanding evolving business practices, tools and technologies. Helps the Bureau identify emerging technologies and their impact on competition.
3. **Innovation Solutions:** fosters collaboration between employees from across the Bureau to creatively solve problems.
4. **Intelligence:** uses established principles and techniques to support complex investigations. Finds emerging threats to competition, and identifies trends and patterns.
5. **Remedies:** provides advice on designing, implementing and monitoring remedies, as well as evaluating remedy performance.
6. **Behavioural Insights:** focuses on matters where consumer behaviour plays a key role. Understanding how people think, behave and make decisions in everyday life assists both enforcement and promotion work.

**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.**

Important amendments to the *Competition Act* come into effect

Important amendments to the *Competition Act* became law on June 23, 2022, strengthening the Bureau's ability to protect Canadian consumers, businesses and workers from anti-competitive conduct. The Bureau has published a [Guide to the 2022 Amendments to the \*Competition Act\*](#).

These amendments:

- increase maximum fines and penalties for those who break the law;
- prohibit wage-fixing and no-poach agreements between employers;
  - changes to the criminal conspiracy provision, which increased potential fines and prohibits wage-fixing and no-poach agreements, came into effect on June 23, 2023. This allowed businesses time to ensure they are complying with the law.
- clarify that incomplete price disclosure - drip pricing - is a deceptive marketing practice;
- allow private access to the Competition Tribunal for those impacted by abuse of dominance; and
- clarify the abuse of dominance framework by:
  - defining an anti-competitive act as one that is intended to have a negative effect on competitors or an adverse effect on competition.
  - expanding the non-exhaustive list of abuse of dominance examples to include a response by a dominant player to make it more difficult for a competitor to enter a market or grow, or to remove a competitor from a market.
- expand the non-exhaustive list of factors used to determine the competitive impact of mergers and monopolistic practices, including:
  - for mergers and competitor collaborations: network effects as an example of barrier to entry, possible entrenchment of a leading incumbent's market position, price and non-price effects such as quality, choice or consumer privacy; and





- for abuse of dominance: effects on barriers to entry – including network effects, change and innovation in the market, price and non-price effects such as quality, choice or consumer privacy, and any other factor relevant to competition.

### The Future of Competition Policy in Canada

On March 15, 2023, the Bureau presented its [submission](#) to the Government of Canada’s ongoing [consultation on the future of competition policy in Canada](#). The submission included over 50 recommendations and focused on the areas where the Bureau believes that reform is required, including digital competition issues.

Some of the recommendations that focus on improving competition in digital markets are as follows:

- Structural presumptions should be enacted to simplify merger cases. This would shift the burden onto the merging parties to prove why a merger that significantly increases concentration would not substantially lessen or prevent competition. The Act’s current standards may not work well for markets that can change quickly and significantly.
- Standards for evaluating a substantial lessening or prevention of competition should focus on harm to the competitive process. The current standards impose a high burden for the Commissioner when they are applied to acquisitions of emerging competitive threats or so-called “killer acquisitions” in the digital economy.
- The Act should be amended to allow courts to temporarily prohibit deceptive conduct from re-occurring in situations where it has stopped, and prohibit substantially similar conduct from occurring. Conduct in digital markets can be stopped and re-started quickly. Courts should therefore be authorized to make orders in circumstances where the conduct has stopped.

**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 Bureau works with the Strategy and Innovation Policy Sector in the Department of Innovation, Science and Economic Development Canada (ISED). This team is responsible for a number of marketplace framework policies, including competition policy.

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

The Bureau works with a number of federal departments and agencies as well as municipal, provincial and territorial governments. We also work with regulators and policymakers to assess the impacts of new and existing policies and regulations on competition.

The Bureau sits on a number of interdepartmental working groups on topics like digital trade, international cooperation, and privacy. Bureau employees also work closely on competition issues in digital markets with colleagues from:

- the Office of the Privacy Commissioner of Canada (OPC)
- the Canadian Radio Television and Telecommunications Commission (CRTC)
- Justice Canada
- Global Affairs Canada
- Finance Canada
- the Privy Council Office, and
- the Treasury Board Secretariat.

#### Creation of the Canadian Digital Regulators Forum

In June 2023, the Bureau, the CRTC and the OPC formed the [Canadian Digital Regulators Forum](#) (the Forum). The Forum will strengthen information sharing and collaboration among its members on common interests relating to digital markets or platforms. The goal is to better understand each participant’s mandate around the digital economy or platforms, and to develop a holistic understanding of emerging digital issues.

#### Consumer Protection

The Bureau’s annual [Fraud Prevention Month campaign in 2023](#) educated Canadians about the “fraudster’s toolbox” in the digital economy – the most common tricks, tools



and tactics used by scammers to deceive victims and perpetrate fraud. Under this topic, the Bureau focused on two sub-themes:

- cryptocurrency investment fraud, and
- dark patterns.

The Bureau also released a Consumer Alert about cryptocurrency investment fraud entitled "[Quick easy money? Sometimes it's a quick easy LIE](#)".

The Bureau is an active member of several international and domestic partnerships and working groups. On the international front, they include:

- the International Consumer Protection and Enforcement Network (ICPEN)
- the Global Anti-Fraud Enforcement Network
- the International Competition Network, and
- the Organisation for Economic Co-operation and Development.

In these partnerships and working groups, members share intelligence, trends and best practices about digital markets and investigations. This enhances the Bureau's knowledge and ability to address the issues in digital markets. For example, in 2023, ICPEN held workshops on emerging digital market issues such as dark patterns. This working group is also in the process of developing an enforcement manual to assist members.



## 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 all available tools 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:

- a. **intervene at the interim measures stage:** In May 2023, the *Autorité* made use of this instrument to order Meta to define objective, transparent, non-discriminatory and proportionate criteria for accessing and maintaining partnerships in the ad verification sector<sup>183</sup>. Previous instances of interim measures include the decision of April 2020 in which the *Autorité* required Google to negotiate with publishers and press agencies the remuneration due to them regarding related rights.<sup>184</sup>
- b. **settle and accept commitments:** In June 2022, in the course of the investigation into the merits of the above mentioned “related rights” case, the *Autorité* accepted Google’s commitments to create a framework for negotiating and sharing the information necessary for a transparent assessment of the remuneration for the reuse of publishers and press agencies’ protected content<sup>185</sup>. The same year, the *Autorité* was also the first competition authority to accept commitments from Meta in antitrust proceedings, with the aim of addressing competition concerns in

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<sup>183</sup> See the *Autorité’s* [Decision 23-MC-01 of 4 May 2023](#) on a request for interim measures by the company Adloox

<sup>184</sup> See the *Autorité’s* [Decision 20-MC-01 of 09 April 2020](#) 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>185</sup> See the *Autorité’s* [Decision 22-D-13 of 21 June 2022](#) regarding practices implemented by Google in the press sector

the French market for non-search related online advertising<sup>186</sup>. Regarding digital advertising, the *Autorité*, in the Google News Corp<sup>187</sup> decision of June 2021, provided quick and effective responses to businesses and publishers harmed by Google's 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. **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 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>188</sup>
- d. **impose financial penalties:** The *Autorité* has imposed hefty fines sanctioning practices of major digital players, notably Google (€ 220 million in the Google News Corp case and € 150 million in the Google Gibmedia case mentioned above; see also a € 500 million fine upon Google for non-compliance with the interim measures decision mentioned above).<sup>189</sup>

We also 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 (SeLogger.com)).<sup>190</sup> While the transaction was cleared following an in depth investigation, the *Autorité* had to take into account network cross-effects, the importance of data and the potential competition of Facebook, Amazon and Google.

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<sup>186</sup> See the *Autorité's* [Decision 22-D-12 of 16 June 2022](#) regarding practices implemented in the online advertising sector.

<sup>187</sup> See the *Autorité's* [Decision 21-D-11 of 7 June 2021](#) regarding practices implemented in the online advertising sector.

<sup>188</sup> See the *Autorité's* [Decision 19-D-26 of 19 December 2019](#) regarding practices implemented in the sector of online search advertising sector.

<sup>189</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>190</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).



**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 *Autorité* has been consistently strengthening its skills and expertise in the digital field, in order to be able to adapt its approach and tools in time to meet the challenges encountered in this field.

First, through the creation of a dedicated Digital Economy Unit, in September 2020, which includes a wide range of profiles, such as engineers, lawyers, economists and datascientists. The Unit is tasked with developing in-depth expertise on all digital subjects, collaborate on investigations into anticompetitive practices in the digital economy or involving digital matters and contribute to studies on new issues related to developments in digital technology (including, for example, the *Autorité's* inquiry on the cloud sector published in June 2023, see below).

The Digital Economy Unit has already added a strong value to current investigations and contributes to several projects.

In collaboration with CodeX Computational Antitrust, it has published the first interactive network graph tool<sup>191</sup> capable of identifying within the *Autorité's* publications (meaning the decisions, opinions and interim measures published between 2009 and 2021) the references to its other publications and to represent these interconnections in a graph.

Designed for the antitrust community (case handlers, scholars, lawyers, etc.), it takes the form of a network graph in which the *Autorité's* publications are represented and connected with each other by their citations. It allows the identification of the interconnections between different publications at first glance and gives an overview of the *Autorité's* antitrust cases<sup>192</sup>.

The Unit is also still involved in the second phase of the DATACROS project<sup>193</sup> which aims to improve the prototype tool for assessing corruption risk factors in the ownership structure of companies (risks of collusion, corruption and money laundering in the European single market). In parallel, the *Autorité* has also begun working on its own

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<sup>191</sup> <https://sen-codex.dev/>

<sup>192</sup> The article entitled “[Deploying Network Analysis in Antitrust Law](#)” (January 2023) explains the whole process and the visualisation tool developed by the *Autorité* along with all the data are accessible to all as open data on the *Autorité's* GitHub ([https://github.com/AutoriteDeLaConcurrence/publication\\_sen-codex\\_networkgraph](https://github.com/AutoriteDeLaConcurrence/publication_sen-codex_networkgraph)).

<sup>193</sup> <https://www.transcrime.it/en/datacros-ii-kick-off-meeting/>



detection tool of collusion in public procurements based on the open-access databases available (DECP, BOAMP, INPI, etc.) combined with future in-house indicators.

Finally, the Digital Economy Unit is currently developing a variety of automated tools for on-going cases investigated by the competition units within the *Autorité*.

Additionally, an horizontal working group (involving different services of the *Autorité*) on the digital sector was set-up in December 2020. This ad-hoc group has completed several projects, *inter alia* providing with suggestions for sector-specific inquiries and studies/reports in the digital sector (one of which leading to the launch of the study on cloud computing, see below), and issuing internal documentation aimed at assisting rapporteurs faced with cases in the digital sector. Following these achievements, the working group was transformed in 2022 into an in-house digital network which carries out its missions on a lasting basis, including the monitoring of digital matters (with the aim of launching new enquiries and studies), the amendment of the existing “analysis grid” and the on-going development of an internal digital toolbox.

Finally, we are constantly improving our knowledge of the specificities of the digital markets by carrying out targeted studies and papers: joint studies with the *Bundeskartellamt* on algorithms and competition<sup>194</sup> and on Big data<sup>195</sup>, *Autorité’s* study on competition and e-commerce<sup>196</sup>, and its contribution to the debate on competition policy and digital challenges<sup>197</sup>.

Through its advisory role, the *Autorité* can also inspire new reforms or provide guidance to stakeholders in the digital sector. The *Autorité’s* opinions can drive the definition of public policies and, in some cases, highlight unexplored or under-exploited growth opportunities.

The *Autorité* has conducted sector-specific inquiries in the sector of new technologies applied to financial activities, and more specifically, to payment activities<sup>198</sup> and on data usage in the online advertising sector<sup>199</sup>.

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<sup>194</sup>See the [joint study of November 2019](#).

<sup>195</sup>See the [joint study of May 2016](#).

<sup>196</sup>See the [study of May 2020](#).

<sup>197</sup>See the [contribution of February 2020](#).

<sup>198</sup>See the *Autorité’s* [Opinion 21-A-05 of 29 April 2021](#) on the sector of new technologies applied to payment activities.

<sup>199</sup>See the *Autorité’s* [Opinion 18-A-03 of 6 March 2018](#) regarding data usage in the online advertising sector.



In June 2023, the *Autorité* issued a market study on the competitive functioning of the cloud sector<sup>200</sup>. In particular, the inquiry considers possible relevant markets and examines the competitive risks raised by tariff barriers, obstacles to interoperability or mergers between players in the sector. The *Autorité* also identifies market failures likely to be addressed by the regulations under discussion such as the EU Data Act or the draft national law aimed at securing and regulating the digital space. Also in relation to the cloud sector, the *Autorité* issued in April 2023 an opinion on certain provisions of the above mentioned draft law to secure and regulate the digital space, with the aim of ensuring consistency with the future EU Data Act<sup>201</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.**

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

- 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 to refer the proposed acquisition of Grail by the Illumina Group to the Commission<sup>202</sup> on the basis of Article 22, which led the European Commission to prohibit the transaction in September 2022, following an in-depth examination. In August 2023, following the referral request made by the *Autorité* and other European competition authorities<sup>203</sup>, the European Commission has decided to initiate proceedings to examine Qualcomm's takeover of Autotalks in the sector of communication technologies used in the automotive and road infrastructure industries.
- b. The **recent adoption of the EU Digital Markets Act**, aiming at ensuring contestable and fair markets in the digital sector by regulating practices implemented by large digital platforms. The *Autorité* has strongly advocated an ambitious and effective DMA and has actively promoted an active role for national competition authorities

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<sup>200</sup> See the *Autorité's* [Opinion 23-A-08 of 29 June 2023](#) on competition in the cloud sector.

<sup>201</sup> See the *Autorité's* [Opinion 23-A-05 of 20 April 2023](#) on the draft law to secure and regulate the digital space.

<sup>202</sup> The *Autorité* was subsequently joined by Belgium, Greece, Iceland, the Netherlands and Norway.

<sup>203</sup> Belgium, Italy, Netherlands, Poland, Spain and Sweden, which were subsequently joined by Denmark, Finland, Luxembourg, Ireland, Czech Republic, Romania, Slovakia and Portugal.





in the implementation of the text in order to ensure an optimal coordination with competition law. Following the entry into force of the DMA in May 2023, a draft bill empowering the *Autorité* to conduct investigations under the DMA is under discussion before the Parliament.

In France, the **ordinance transposing Directive (EU) 2019/1 (the ECN+ Directive)** has been published in May 2021<sup>204</sup>. This new legal framework has provided the *Autorité* with powerful new tools adapted to new enforcement challenges, particularly those raised by the development of large platforms. The *Autorité* has now the possibility, *inter alia*, to set its own priorities, to file an action on its own initiative to impose interim measures and to issue structural injunctions.

**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 that its work to promote competition in digital markets is consistent with other regulatory regimes in digital markets. The French framework provides for a comprehensive and efficient set of measures allowing the *Autorité* and sectoral regulators to consult each other<sup>205</sup>.

The authorities concerned include, *inter alia*, the data protection agency (CNIL), the telecom regulator (ARCEP) and the media and broadcasting regulator (ARCOM).

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)

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<sup>204</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").

<sup>205</sup> Article R. 463-9 of the French commercial code provides that the *Autorité* must notify each independent regulatory authority of all proceedings that are initiated in sectors falling within its competence. Conversely, under sectoral legislation, regulators have the possibility of referring cases to the *Autorité* if they identify a competition law problem in their field of activity.



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. In May 2021, following a preliminary investigation, the *Autorité* rejected the request for interim measures made by the complainants, specifying that it would continue the investigation into the merits of the case<sup>206</sup>. In July 2023, the General Rapporteur notified an objection to Apple<sup>207</sup>.

The two authorities have maintained a very close and fruitful dialogue in 2022, as demonstrated by the speeches given by the President of the *Autorité*'s and the CNIL's to their respective Boards. This ongoing exchange has also led to inter-agency training (focusing on the functioning of each institution and their respective legal frameworks) as well as workshops on topics of common interest.

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<sup>206</sup> See the *Autorité*'s [decision of 17 March 2021](#) in the sector of mobile applications advertising on iOS.

<sup>207</sup> See the *Autorité*'s [press release](#).

## 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.

In January 2021 the 10<sup>th</sup> amendment to the German Competition Act (*Gesetz gegen Wettbewerbsbeschränkungen*; hereinafter “GWB”) came into force, establishing, inter alia, a new concept of “paramount significance for competition across markets” (Section 19a). The new Section 19a seeks to afford the Bundeskartellamt enhanced control over the market activities of large digital companies. It is designed around a two-step mechanism that differs from traditional abuse control in that it enables earlier and more effective intervention. In a first step and irrespective of the existence of abusive practices, the Bundeskartellamt may issue a decision declaring that an undertaking which is active to a significant extent on multi-sided or network markets is of paramount significance for competition across markets. The Bundeskartellamt may then, in a second step, prohibit the addressee from engaging in certain behaviour.

As at September 2023, designation decisions according to Section 19a(1) GWB have been rendered against Google, Meta, Amazon and Apple, declaring these undertakings to be of paramount significance for competition across markets.<sup>208</sup> In all four cases, the Bundeskartellamt took a holistic, cross-market perspective when assessing the economic power of these large digital companies and found that they have a position of economic power across markets that allows for a scope of action across markets that is not sufficiently controlled by competition. A designation proceeding against Microsoft has been initiated in March 2023 and is still ongoing.<sup>209</sup>

The authority is already conducting a number of cases under Section 19a(2) GWB which examine specific practices of the aforementioned undertakings. With respect to Google, as a result of a proceeding concerning its data processing terms, Google’s services and

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<sup>208</sup> Bundeskartellamt, [press release](#) of 5 January 2022, [case summary](#) (Google); Bundeskartellamt, [press release](#) of 4 May 2022, [case summary](#) (Meta); Bundeskartellamt, [press release](#) of 6 July 2022, [case summary](#) (Amazon); Bundeskartellamt, [press release](#) of 5 April 2023, [case summary](#) (Apple).

<sup>209</sup> Bundeskartellamt, [press release](#) of 28 March 2023.



third-party services can no longer be cross-used in separate services offered by Google or even be combined without the users' free and informed consent. Such an obligation will already result from the DMA for Google services which have recently been designated by the European Commission under the DMA. Google's Commitments provided to the Bundeskartellamt concern the processing of data across services involving more than 25 other services (including Gmail, Google News, Assistant, Contacts and Google TV).<sup>210</sup> The Bundeskartellamt also completed a case concerned with the Google News Showcase service (more on this case in the answer to question 4 below) and investigates practices in connection with Google Maps Platform and Google Automotive Services (GAS). In the latter case, in June 2023, it issued a statement of objections regarding GAS, a bundle of services comprised of Google Maps, Google Play and Google Assistant in which it comes to the preliminary conclusion that, inter alia, the bundling of different services within GAS and advertising revenue share agreements with vehicle manufacturers may pose significant risks to competition. Furthermore, the Bundeskartellamt continues its investigation into Google's restrictions on combining its own Google Maps Platform map services with third-party map services.<sup>211</sup>

In the ongoing proceeding against Meta, also based on Sec. 19a(2) GWB, regarding the link between its Oculus (now Meta Quest) virtual reality (VR) products and the social network Facebook, Meta has responded to the Bundeskartellamt's concerns and now offers users the possibility to use the VR headsets with a separate Meta account instead of a Facebook or Instagram account.<sup>212</sup> Further ongoing proceedings based on Sec. 19a(2) GWB concern Apple's App Tracking Transparency Framework and two cases against Amazon, the first of which examines price control mechanisms on the Amazon marketplace while the second deals with issues of brandgating, e.g. agreements of Amazon with (brand) manufacturers.<sup>213</sup>

Notable cases relating to the digital economy based on traditional abuse control include the Bundeskartellamt's landmark decision against Facebook. The decision requires Facebook to refrain from using terms and conditions based on which the platform is entitled to gather data from numerous sources outside the social network facebook.com

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<sup>210</sup> Bundeskartellamt, [press release](#) and [decision](#) of 5 October 2023.

<sup>211</sup> Bundeskartellamt, [press release](#) of 21 June 2022 and [press release](#) of 21 June 2023.

<sup>212</sup> Bundeskartellamt, [press release](#) of 23 November 2022 and [case summary](#). Note that the proceeding as a whole is not yet concluded as the Bundeskartellamt continues to investigate whether and how data processed in the context of different Meta services are combined.

<sup>213</sup> Bundeskartellamt, [press release](#) of 21 June 2022 (Apple's App Tracking Transparency Framework); Bundeskartellamt [press release](#) of 14 November 2022 (Amazon cases).

without users' freely given consent to combine them with "on-Facebook" data.<sup>214</sup> While this decision is still being appealed by Meta, after intensive talks with the Bundeskartellamt, in June 2023, Meta announced plans to implement a modified accounts center which will allow Meta's customers to make a largely free and informed decision about whether they want Meta's services separately or in combined form.<sup>215</sup> In July 2023, the ECJ ruled that the Bundeskartellamt may take data protection rules into consideration when weighing interests in decisions under competition law.

In May 2023, the Bundeskartellamt published the final report on its sector inquiry into non-search online advertising.<sup>216</sup> The report highlights that non-search advertising is based on a highly complex system of automated trading in the online advertising space that is not sufficiently transparent. The final report complements an earlier report, published for public discussion in August 2022 which already described in detail that Alphabet holds an extraordinarily strong market position with regard to practically all relevant services.<sup>217</sup> As Google also has a significant position in the online search advertising market, it holds a prominent position in the online advertising sector as a whole.

Digitalisation affects almost all sectors of the economy. In 2022 the Bundeskartellamt, for example, also examined Catena-X, a cooperation within the automotive industry which aims to create a data network for collaboration and which is a major component of the GAIA-X initiative to create a competitive data infrastructure in Germany. The competitive assessment as to how Catena-X intends to promote the development of uniform standards for data transfer and cooperation regarding R&D raised no objections.<sup>218</sup> In another proceeding the Bundeskartellamt assessed mobility platforms, i.e. service providers which mainly offer online solutions for integrated route planning. The authority imposed various measures, including, inter alia, that these mobility platforms can access train traffic data, such as information on delays or cancellations, from Deutsche Bahn, the dominant rail transport company in Germany, in particular in a non-discriminatory way.<sup>219</sup> In January 2023, the Bundeskartellamt initiated a proceeding against PayPal, one of the leading online payment schemes in Germany. The proceeding investigates whether PayPal's terms and conditions which, inter alia, forbid merchants to offer goods and

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<sup>214</sup> Bundeskartellamt, [press release](#) of 7 February 2019, [case summary](#).

<sup>216</sup> Bundeskartellamt, [press release](#) of 31 May 2023.

<sup>217</sup> Bundeskartellamt, [executive summary](#) of the report for public discussion.

<sup>218</sup> Bundeskartellamt, [press release](#) of 24 May 2022.

<sup>219</sup> Bundeskartellamt, [press release](#) of 28 June 2023.



services at lower prices if customers choose a payment method cheaper than PayPal might possibly foreclose competitors and restrict price competition.<sup>220</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 continues to expand its focus and expertise on the digital economy as well as its capabilities in the field of data science. Investigation methods are continuously modernised and adapted to meet the latest standards. Over the course of 2023, the Bundeskartellamt has recruited additional data scientists and IT experts.

The already well-established Digital Economy Unit within the General Policy Division supports the work of the decision divisions in the digital area and carries out its work in collaboration with other internal support units and in consultation with other authorities.

Since many different proceedings require the analysis of data, the Bundeskartellamt has several specialist units which deal with data analytics. The Chief Economist Team provides advanced data analyses for highly 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 used 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 highly automated processes for reviewing, reporting and forwarding data from a multitude of sources.

**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 Bundeskartellamt's toolkit has developed considerably over the years. With the 10<sup>th</sup> amendment to the GWB in 2021, the provision under Section 19a (see already answer to question 1 above) was introduced. This novel form of abuse control is based on the rationale that digital markets might require more effective antitrust intervention. This

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<sup>220</sup> Bundeskartellamt, [press release](#) of 23 January 2023.

reflects the widespread phenomenon in the digital economy that some individual companies hold key strategic positions of economic power across markets which result in a multitude of dependencies for the other market participants, and that these companies have created ecosystems characterised by heavily integrated products and services. Conduct that can be prohibited by the Bundeskartellamt includes, for example, the self-preferencing of a group's own services or envelopment strategies. Due to, inter alia, the codification of specific theories of harm, a shifted burden of proof, and a concentrated judicial review, the Bundeskartellamt is now able at a much earlier stage to prohibit companies of paramount significance for competition across markets from engaging in certain types of conduct. 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.

Important changes related to digital markets introduced with the 10<sup>th</sup> amendment also affect 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. Another new provision allows the Bundeskartellamt under certain preconditions to 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 the serious risk of a market 'tipping' towards a larger supplier.

In February 2022, the Federal Ministry for Economic Affairs and Climate Action published its competition policy agenda up to the year 2025, which contains 10 points for sustainable competition as a pillar of the socio-ecological market economy.<sup>221</sup> As at October 2023, the 11<sup>th</sup> amendment to the GWB is about to enter into force.<sup>222</sup> While most of the issues that this amendment addresses are not directly related to digital markets, it contains provisions that allow the Bundeskartellamt to support the European Commission with the enforcement of the Digital Markets Act (DMA) as well as provisions facilitating private enforcement of the DMA. In addition, there are also ongoing

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<sup>221</sup> The Federal Ministry for Economic Affairs and Climate Action: [The competition policy agenda up to 2025](#).

<sup>222</sup> See [announcement](#) on the website of the German Parliament (in German only).



discussions on whether it is necessary to modify the merger control regime in order to better account for the specificities of digital markets.<sup>223</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.**

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

The aforementioned Facebook case is a prominent example in which privacy considerations were relevant for the Bundeskartellamt's finding of an abusive practice. Among other conditions, the use of the social network for private purposes 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 in 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. In the course of the investigation concerning Facebook, the Bundeskartellamt closely cooperated with data protection authorities in clarifying the data protection issues involved.

In December 2022, the Bundeskartellamt concluded its proceeding concerned with the Google News Showcase service.<sup>224</sup> Among other things, the authority was concerned that the relevant contractual terms might include unreasonable conditions to the detriment of the participating publishers. During the course of the proceedings, Google changed its contractual practices in such a way that press publishers will not face difficulties in asserting their general ancillary copyright [*Leistungsschutzrecht der Presseverleger*].

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<sup>223</sup> This topic was also discussed at a meeting of the Working Group on Competition Law on 29 September 2022, see [press release](#).

<sup>224</sup> Bundeskartellamt, [press release](#) of 21 December 2022.





Google also abandoned plans to integrate Showcase into the general Google search service and is working towards providing non-discriminatory access to the platform.<sup>225</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. The latest sector inquiry into video and messenger services has been completed in May 2023.<sup>226</sup> In its final report, the Bundeskartellamt focuses on the issues of data protection and data security and finds that some services are likely to violate consumer law provisions. In consultation with the Federal Office for Information Security (BSI), the Bundeskartellamt has compiled a checklist outlining the essential criteria which ensure data security and compliance with the law. The cooperation with the BSI, the federal cyber security authority, in the area of digital consumer protection has been institutionalised since early 2021 when the two authorities signed a declaration of intent for a continuous cooperation. A sector inquiry into scoring in the online retail sector has been initiated in March 2022 and deals with retailers' practices to check consumers' credit standing, i.e. their ability to pay when shopping online.<sup>227</sup>

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 was involved in an ICN Steering Group project focussing on competition law enforcement at the intersection between competition, consumer protection and privacy.

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<sup>225</sup> See also the [case summary](#) of the decision.

<sup>226</sup> Bundeskartellamt, [press release](#) of 17 May 2023 and [English summary of the report](#).

<sup>227</sup> Bundeskartellamt, [press release](#) of 31 March 2022.



## 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 Autorità Garante della Concorrenza e del Mercato (hereafter, the Authority or the AGCM) has been very active in the enforcement of competition law and other related provisions in digital markets. While acknowledging the positive contribution of digital platforms to our economies, the AGCM has intervened to ensure that these markets remain competitive and dynamic, by favouring access to digital ecosystems and interoperability.

In May 2023, the Authority opened an investigation against Apple for an alleged abuse of its dominance in the applications (apps) market consisting in the imposition of a restrictive privacy policy on third-party app developers and limitations to their access to device users' advertising data<sup>228</sup>. Namely, as a result of its privacy policy adopted in 2021, Apple introduced pop-up prompts requiring users of its devices to give consent to the app to track their data for targeting advertisement purposes. However, according to the AGCM, such prompts were more prominent for rival apps than for Apple own apps, and they were accompanied by a deterrent language about the tracking activity, which could dissuade users to give consent.

Moreover, the Authority is investigating whether Apple abuses its dominant position by restricting third-party app developers' access to Apple's data used to measure the effectiveness of advertising campaigns on their applications. The technical characteristics of the programming interface made available by Apple to third-part developers and advertisers is deemed to be much less effective than the interface Apple has adopted for its own operations. Since both the availability of data on user profiling and the measurement of advertising campaign effectiveness are essential elements for the attractiveness of advertising space sold by app developers and purchased by advertisers, Apple's alleged discriminatory conduct is likely to decrease third-party advertisers' revenues to the benefit of Apple's marketing division, as well as to reduce the entry or prevent competitors from entering and/or staying in the market for app development and distribution, to the benefit of Apple's own apps and, in turn, its mobile devices and iOS operating system.

In April 2023, the Authority applied for the first time a new provision on the abuse of economic dependence by digital platforms (see last paragraph of the response to question 3), by opening an investigation to ascertain whether Meta abused the economic dependence

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<sup>228</sup> See AGCM Case no A561, press release of 11 May 2023, <https://en.agcm.it/en/media/press-releases/2023/5/A561-A561B>



of the Italian Society for Authors and Publishers (SIAE) by (i) interrupting licensing negotiations for the use of artists' music and subsequently removing their musical content from its platforms and (ii) forcing the SIAE to accept offers for its artists' work without providing the collecting society with the relevant data to assess the validity of those proposals. At the same time, the AGCM imposed interim measures on Meta, ordering to restart negotiations and reinsert the artists' work back on its platforms.

The SIAE is Italy's largest collecting society that licenses and manages copyrighted works on behalf of copyright owners. According to the Authority, Meta's conduct could significantly hamper SIAE's competitiveness and prevent affiliated artists from reaching consumers through social media platforms. Moreover, the Authority observed that the removal of SIAE's musical content from Meta's platforms could negatively affect artists' remuneration and limit consumer choice.

In July 2022, the Authority opened an investigation against Google for an alleged breach of Art. 102 TFEU, consisting in the refusal to grant interoperability to other platforms and, in particular, with the Weople App, managed by Hoda<sup>229</sup>. The latter has developed new services through its innovative data investment bank: by signing up to its Weople app, users authorize Hoda, pursuant to article 20 of the GDPR, to collect, process and sell personal data on their behalf to businesses requesting them for client targeting, data collection and other purposes. Hoda receives a fee for this service. In the Authority's view, Google's conduct could compress the right to portability of personal data, established by Article 20 of the GDPR, and could reduce the economic benefits that consumers can derive from their data. At the same time, the alleged abuse could restrict competition insofar as it limits the ability of operators to develop innovative data-based services.

To address the above concerns, Google submitted commitments, which underwent a market test in March 2023<sup>230</sup>. The package test included a commitment to help users better navigate Google's Takeout tool, which allows data to be downloaded across Google's platforms for use on other services. Moreover, Google committed to make available to third-party operators detailed documentation and information regarding the data included in connection to users' searches and their browsing histories in order to facilitate their extraction and importation. Finally, the company proposed establishing a programme that would allow authorised third-parties to directly access the data that consumers have agreed

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<sup>229</sup> See Case no A552, press release of 14 July 2022, <https://en.agcm.it/en/media/press-releases/2022/7/A552>

<sup>230</sup> See AGCM case n. [A552 – GOOGLE-OBSTACLES TO DATA PORTABILITY](#), market test commitment decision no. 30508, published on the AGCM Bulletin no 12/2023.



to export without having to go through an intermediary. The investigation was closed in July 2023, by accepting Google's commitments, as a result of the market test<sup>231</sup>.

The Authority's intervention in the digital economy was not limited to big tech companies. In October 2022, the AGCM closed with commitments an investigation against Mastercard Europe SA, for an alleged anticompetitive conduct consisting in the imposition of the so-called "double-tap" procedure, that is, the obligation to place the card twice at the POS for contactless debit card payments using the co-badged cards (i.e., cards bearing two circuits, typically an international circuit like Mastercard and a domestic one). According to the Authority's preliminary assessment, this procedure prevented co-badged cards from making single-tap payments, including contactless transactions through digital wallets. As a consequence, the imposition of this procedure would result in an entry barrier for Mastercard's competing payment schemes, by hampering the enrolling of their co-badged cards on smartphones' digital wallets.

More generally, Mastercard's conduct could discourage the use of co-badged debit cards by consumers, as it would make payments more complex. Ultimately, it could disincentivize the issuance of co-badged debit cards, in favour of Mastercard's single-brand cards. The AGCM also noted that Mastercard's conduct occurred at a crucial stage of technological development of digital wallets, as well as of significant growth in its use by consumers. During the investigation, Mastercard first suspended the imposition of the double-tap procedure and then proposed commitments, aimed at eliminating its binding nature and the related penalties for failure to migrate to double-tap. In addition, the commitment package included a provision to compensate operators who had migrated to single-tap mode in the meantime.

In 2021, the Authority's enforcement records in the digital economy were also impressive<sup>232</sup>.

It completed two investigations against Amazon. In one, Amazon was fined € 1.13 billion leveraging its dominant position in the Italian market for intermediation services on marketplaces in order to favour the adoption of its own logistics service. The AGCM also imposed behavioural measures regarding sales benefits for and visibility of sellers on the Amazon Marketplace<sup>233</sup>. In the other, it ruled that a brand-gating agreement between

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<sup>231</sup> See press release here (<https://en.agcm.it/en/media/press-releases/2023/7/A552>).

<sup>232</sup> See Italy's submission to the [2021 Compendium](#) and [2022 Compendium](#).

<sup>233</sup> See Case no A528 press release of 9 December 2021, <https://en.agcm.it/en/media/press-releases/2021/12/A528>. An English summary of the case is available in Section 3 of the AGCM contribution to the June 2023 roundtable on algorithms (see [Algorithmic competition – Note by Italy](#)). In December 2022, the European Commission concluded its own investigation, which resulted in Amazon adopting, for all other EU countries, the same commitments imposed by our Authority as behavioural measures.



Amazon and Apple which restricted certain resellers of Apple products was anti-competitive<sup>234</sup>.

Another infringement decision concerned Google. The AGCM imposed a fine of over € 100 million to Google for refusing to include a rival app in its Android Auto system that provides services related to the recharging of electric vehicles<sup>235</sup>.

Finally, the Authority made binding the commitments submitted by the Italian Association of Insurers (ANIA) with respect to its proposed antifraud project which involves the creation of databases and the development of common algorithms to define fraud risk indicators that insurance companies may use in their activities. The final commitments ensure fair and non-discriminatory access to the databases for non-ANIA members and prevent the sharing of sensitive data and information<sup>236</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).**

Following a re-organization introduced in January 2023, the AGCM created a dedicated directorate to investigate anticompetitive conducts by digital platforms and, more generally, address challenges in the digital economy. Moreover, the AGCM is in the process of strengthening its IT / data science capabilities by hiring additional staff.

**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.**

A law passed by the Parliament in August 2022 brought new changes in merger control and new tools to tackle the bargaining power of digital platforms<sup>237</sup>.

As for merger control, the law introduces a harmonisation with the EU law in particular with respect to the substantive test (replacing the dominance test with the SIEC), the notion of

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<sup>234</sup> See Case n. I842, press release of 17 December 2021, <https://en.agcm.it/en/media/press-releases/2021/12/I842>

<sup>235</sup> See Case no A529 press release of 13 May 2021, <https://en.agcm.it/en/media/press-releases/2021/5/A529>

<sup>236</sup> See the AGCM case no I844 - PROGETTO ANTIFRODE ANIA, commitment decision no 29826, published on the AGCM Bulletin no 39/2021.

<sup>237</sup> These changes are described in greater details in Section 1 of the [Annual Report on Competition Policy Developments in Italy -- 2022](#).



joint venture (eliminating the notion of cooperative JV) 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 by tackling transactions that do not necessarily involve the creation or strengthening of a dominant position but are still capable of significantly impeding effective competition.

The law also introduces a regime for reviewing transactions falling below the applicable thresholds in order to capture acquisitions of nascent competitors. Under this new framework, the Authority may require the notification of a transaction when: i) there is prima facie risk that the concentration would harm competition on the Italian market (or on a relevant part of it), also taking into account the detrimental effects for the development and diffusion of small enterprises characterized by innovative strategies; ii) the transaction has occurred at most 6 months before the notification order; iii) the transaction meets one of the two existing applicable filing thresholds or when the worldwide overall turnover of the undertakings concerned is higher than EUR 5 billion<sup>238</sup>.

With respect to bargaining power of digital platforms, the law updates the national legislation on abuse of economic dependence (Art. 9 of Italian law no. 192/1998) which the AGCM has the power to enforce since 2001, provided that the abuse is “relevant” for competition in the markets concerned. The existing provisions are amended to account for the intermediation power of digital platforms: more specifically, the law introduces a rebuttable presumption of economic dependence for those operators dealing with digital platforms offering intermediation services when the latter represent a key gateway in reaching end-users and/or suppliers. Furthermore, the reform indicates a non-exhaustive “black list” of conducts which builds upon the prohibitions stemming from Article 102 TFEU. The AGCM has used this new provision for the first time in April 2023 against Meta (see response to question 1 above).

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

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<sup>238</sup> Following a consultation process, in January 2023 the AGCM issued a notice to provide more guidance in the application of this new regime. See [“Comunicazione relativa all’applicazione dell’articolo 16, comma 1-bis, della legge 10 ottobre 1990, n. 287”](#).



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

In 2020, the Authority published the findings of an inquiry on big data, carried out jointly with the Communications Regulator and the Data Protection Authority<sup>239</sup>. The inquiry was a first attempt to explore the different dimensions of consumer data and its implication for competition, consumer protection and data protection, in a multi-disciplinary perspective.

The AGCM dual role enforcement experience confirms 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.

In November 2021, the AGCM fined Apple and Google for some unfair and aggressive commercial practices related to the utilization of user data, such as the omission of information about the collection and use of personal data and the set-up of an opt-in as default option for data sharing consent<sup>240</sup>. Moreover, 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>241</sup>.

Finally, the Authority has sought to strengthen its relationships with some foreign dual competition authorities with a view to mutually expanding knowledge and capabilities to address the challenges of the digital economy. In February 2023, the AGCM signed a Memorandum of Understanding with the Australian Competition and Consumer Commission (ACCC), providing for new opportunities to cooperate on investigations and share experiences and best practices in areas of common interests, in particular with respect to the digital economy. In this area, the two agencies are constantly informing each other of their respective advocacy and enforcement initiatives.

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<sup>239</sup> See Italy's submission to the [2021 Compendium](#). 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.

<sup>240</sup> See Cases no. PS11147-PS11150, press release of 26 November 2021, <https://en.agcm.it/en/media/press-releases/2021/11/PS11147-PS11150>

<sup>241</sup> See Case no PS10601, [press release of 12 May 2017](#), Case no PS11112, [press release of 7 December 2018](#) and [press release of 17 February 2021](#). For an overview of these two consumer protection cases, see the [AGCM contribution](#) (section 4) to the 2020 OECD Roundtable Consumer Data Rights and Competition.







## 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>242</sup> of the AMA. The JFTC approved a commitment plan submitted by Amazon Japan to address antitrust concerns.<sup>243</sup>

The JFTC moreover investigated Booking.com B.V. and Expedia Lodging Partner Services Sàrl (hereinafter referred to as the “ELPS”) and suspected that activities of Booking.com B.V. and the ELPS (requiring trading accommodation facilities to comply with so-called parity clauses for room rates and availability (except for narrow parity clauses for room rates<sup>244</sup>)) violated the Article 19 (Trading on Restrictive Terms)<sup>245</sup> of the AMA. The JFTC approved commitment plans submitted by Booking.com B.V. and by the ELPS to address antitrust concerns.<sup>246 247</sup>

The JFTC had also investigated Apple's conducts regarding the operation of App Store and announced the closing of the investigation on the case in September 2021. During 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. Apple took these measures globally in March 2022.

Additionally, the JFTC had investigated Rakuten's conducts regarding the operation of Rakuten’s online retail platform “Rakuten Ichiba”. It announced the closing of the

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<sup>242</sup> Unfair Trade Practices stipulated in the Article 2, Paragraph (9), Item (v) [Abuse of Superior Bargaining Position] of the AMA.

<sup>243</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2020/September/200910.html>

<sup>244</sup> In these Commitment Procedures, the JFTC did not cover narrow parity clauses for room rates, based on the present situation where the accommodation operators do not necessarily abide by the clauses.

<sup>245</sup> Unfair Trade Practices stipulated in the Article 2, Paragraph (9), Item (vi) [Trading on Restrictive Terms] of the AMA.

<sup>246</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2022/March/220316.html>

<sup>247</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2022/June/220602.html>



investigation on the case in December 2021 after Rakuten had proposed to take voluntary measures to eliminate the suspicion of violation of the AMA.

As the latest case, in October 2023, the JFTC announced the opening of the investigation and seeking information and comments from third parties concerning the suspected violation of the AMA by Google. The JFTC suspects that Google has excluded business activities of its competitors or restrict business activities of its counterparties by; (1) entering into license agreements with Android mobile device manufactures (hereinafter referred to as "OEMs") under which Google makes them install its applications, such as a search application named "Google Search" and a web browser application named "Google Chrome", together with its application store named "Google Play", and designates where to place icons, etc. of such applications on screens of the devices, and (2) entering into agreements with OEMs, etc. under which Google shares its revenue from its search advertising service with them on conditions including that they do not pre-install competitors' search application.<sup>248</sup> This initiative is following an policy statement, released in June 2022, that the JFTC would actively seek information and comments from third parties, concerning cases mainly in digital markets even in the early stages of the case investigation.

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>249</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 relevant documents, etc. and reviews the merger plans.

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<sup>248</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2023/October/231023.html>

<sup>249</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2019/December/191217.html>



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 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 would implement their proposed remedies, the JFTC concluded that the acquisition would not substantially restrain competition in any relevant markets.<sup>250</sup>

Furthermore, in June 2022, the JFTC made the policy statement that it would actively seek information and comments from third parties, concerning cases mainly in digital markets, regardless of whether or not the Phase II review begins. Following the statement, the JFTC sought information and comments from third parties concerning the proposed acquisition of Mandiant, Inc. by Google LLC and the proposed acquisition of Activision Blizzard, Inc. by Microsoft Corporation in June 2022, and the proposed acquisition of Figma, Inc. by Adobe Inc. in April 2023.

In addition to enforcement and merger review, the JFTC has conducted a series of market studies and published reports in order to clarify the actual status of transactions and the state of competition in digital markets 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>251</sup>, (2) digital advertising (published on February 17, 2021), (3) public procurement of IT system (published on February 8, 2022), (4) trade practices in cloud services sector (published on June 28, 2022)<sup>252</sup>, (5) subcontracting transactions in software services (published on June 29, 2022), (6) mobile OS and mobile app distribution (published on February 9, 2023)<sup>253</sup>, (7) the follow-up survey on fintech-based services (published on

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<sup>250</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/January/210114.html>

<sup>251</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2019/October/191031.html>

<sup>252</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/February/210217.html>

<sup>253</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2023/February/230209.html>



March 1, 2023)<sup>254</sup>, and (8) news content distribution (published on September 21, 2023)<sup>255</sup>. Furthermore, the JFTC started new market study on smart TVs and OTT platforms.

In June 2022, the JFTC made a statement to strengthen competition policy responding to rapid socioeconomic changes such as digitization. In the statement, it is announced that the JFTC will strengthen the effectiveness of its advocacy function through active dialogue and strategic cooperation with relevant ministries and agencies, persuasive recommendations, effective public communication, and timely and appropriate follow-up. Moreover, it clarifies the policy of seamlessly linking market studies to individual enforcement, such as by proactively utilizing information provided through market studies.

**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 established new units to address issues in the digital market and has 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 market studies 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 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

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<sup>254</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2023/March/230301.html>

<sup>255</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2023/September/230921.html>

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>256</sup> Furthermore, the JFTC appointed four external experts in digital markets as “Digital Special Advisors” in July 2021, who provide the JFTC with their expertise related to digital markets, and hired new staff members with tech background as “Digital Analysts” in April 2022, who provide advice on the JFTC’s various initiatives related to the digital field, such as market studies.

The JFTC’s Competition Policy Research Center (“CPRC”) has been continuously organizing public events focused on digital competition. In December 2022, the CPRC 5th Osaka Symposium “Ecosystems by Digital Platforms” was held<sup>257</sup>. Speakers discussed business models of major digital platforms and impacts on competition. In March 2023, the CPRC 21st International Symposium “Metaverse and Antitrust Law/Competition Policy” took place<sup>258</sup>. Panelists shared their views on the current state of metaverse and explored how metaverse would affect competition law and policy. Most recently, the CPRC focused on “Intersection of Competition Policy, Consumer Protection Policy, and Personal Data Protection Policy in the Use of Personal Data” in June 2023. Besides these conferences, the CPRC has held a variety of Open Seminars<sup>259</sup> and Symposiums<sup>260</sup> which lead to better understanding of competition issues in 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.

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<sup>256</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/March/210331.html>

<sup>257</sup> <https://www.jftc.go.jp/en/cprc/events/symposium/221202.html>

<sup>258</sup> <https://www.jftc.go.jp/en/cprc/events/symposium/230217.html>

<sup>259</sup> [https://www.jftc.go.jp/en/cprc/events/openseminars/index\\_1.html](https://www.jftc.go.jp/en/cprc/events/openseminars/index_1.html)

<sup>260</sup> [https://www.jftc.go.jp/en/cprc/events/symposium/index\\_1.html](https://www.jftc.go.jp/en/cprc/events/symposium/index_1.html)



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. In July 2022, Cabinet made a decision on including digital advertising sector within the scope of the Act on Improving Transparency and Fairness of Digital Platforms.

The JFTC also published “Market Study Report on Mobile OS and Mobile App Distribution” on February 9, 2023, which proposed that it would be effective to develop a law to create a healthy competitive environment in the mobile OS market and the app distribution service market and to complement the enforcement of the AMA. Based on this report, the HDMC has been engaged in discussions on the development of new rules in the mobile ecosystem. In June 2023, the HDMC published “Competition Assessment of the Mobile Ecosystem Final Report”, which decided to develop a legal system by mixing co-regulation and ex-ante regulation.

**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 JFTC has published guidelines, reports on a fact-finding survey, and study group reports 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>261</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

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<sup>261</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)



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 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>262</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 competition policy in data market to relevant ministries, including privacy authorities, and businesses. The 6 points include privacy concerns, which, for example, point out that it is important to provide users with sufficient explanation on their use of personal data and to obtain adequate approvals from users.

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<sup>262</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/June/210625.html>



## UK - Competition and Markets Authority

**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 continues to be very active in its work to promote greater competition in digital markets and has a live portfolio of digital cases.

The CMA has a number of enforcement cases in relation to competition in digital markets. These include investigations into Amazon over concerns that practices affecting sellers on its UK Marketplace may be anti-competitive<sup>263</sup> Apple's conduct in relation to the distribution of apps on iOS and iPadOS devices in the UK,<sup>264</sup> and whether Google has abused a dominant position through its conduct in ad tech<sup>265</sup> The CMA's investigation into Google and Meta's 'Jedi Blue' agreement in relation to Meta's use of Google's header bidding product has been combined with the CMA's investigation into Google's conduct in ad tech<sup>266</sup> The CMA has recently published a Notice of Intention to Accept Commitments (NIAC) in relation to into Meta's (formerly Facebook) use of data,<sup>267</sup> as well as Google's conduct in relation to its distribution of apps on Android devices in the UK.<sup>268</sup>

In February 2022, the CMA accepted commitments from Google in relation to its proposals to remove third party cookies (TPCs) on Chrome and develop its Privacy Sandbox tools.<sup>269</sup> A Monitoring Trustee, supported by a Technical Expert, has been appointed to monitor certain elements of the commitments. They are required to report to the CMA on a quarterly basis. The CMA also has a role in supervising Google to ensure that the Privacy Sandbox is developed in a way that benefits consumers.

The CMA has reviewed a number of mergers in digital markets. The CMA has recently completed an investigation into Amazon's takeover of iRobot, clearing it at phase 1.<sup>270</sup> On 26 April, the CMA published its final report in Microsoft / Activision, concluding that the merger may be expected to result in a substantial lessening of competition in cloud

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<sup>263</sup> [Investigation into Amazon's Marketplace - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-amazon-s-marketplace)

<sup>264</sup> [Investigation into Apple AppStore - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-apple-appstore)

<sup>265</sup> [Investigation into Apple AppStore - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-apple-appstore)

<sup>266</sup> [Investigation into suspected anti-competitive agreement between Google and Meta and behaviour by Google in relation to header bidding - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-suspected-anti-competitive-agreement-between-google-and-meta)

<sup>267</sup> [Meta offers to limit use of other businesses' ad data to address CMA concerns - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/meta-offers-to-limit-use-of-other-businesses-ad-data)

<sup>268</sup> [Investigation into suspected anti-competitive conduct by Google - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-suspected-anti-competitive-conduct-by-google)

<sup>269</sup> [Investigation into Google's 'Privacy Sandbox' browser changes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-google-s-privacy-sandbox-browser-changes)

<sup>270</sup> [Amazon / iRobot merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/amazon-irobot-merger-inquiry)



gaming services in the UK. Microsoft has appealed the CMA's decision before the Competition Appeal Tribunal (CAT).<sup>271</sup> On 22 August 2023, the CMA opened an investigation into a restructured proposed acquisition by Microsoft of Activision, which excludes Activision's cloud streaming rights outside of the European Economic Area (EEA). On 13 October 2023, the CMA decided to grant consent to Microsoft to complete this restructured acquisition, subject to commitments that will allow the CMA to enforce the terms of the sale of Activision's rights to Ubisoft.

Previously, the CMA blocked the merger of Meta (Facebook) / Giphy in November 2021.<sup>272</sup> Meta appealed the CMA's decision to the CAT and in July 2022 the CAT upheld the CMA's decision on all substantive grounds of appeal, endorsing the CMA's framework for analysis of dynamic competition. The CAT found in Meta's favour only on a procedural ground relating to the sharing of third-party confidential information, which resulted in the case being remitted to the CMA for re-assessment. The CMA announced its remittal decision in November 2022, finding a substantial lessening of competition (SLC) in relation to both the dynamic competition and foreclosure theories of harm and concluding that Giphy would need to be sold off in its entirety to an approved buyer. Giphy was sold to the approved purchaser, Shutterstock, in May 2023.<sup>273</sup>

The CMA has also previously investigated and cleared Booking/eTraveli,<sup>274</sup> in relation to online travel agent (OTA) businesses in the UK and worldwide. It also cleared Facebook/Kustomer,<sup>275</sup> which concerned online display advertising, customer relationship management software, and business to consumer messaging, and Microsoft/Nuance, which concerned voice recognition and transcription software. In recent years, the CMA has conducted detailed reviews of mergers in a number of other digital markets including Uber/Autocab,<sup>276</sup> Google/Looker,<sup>277</sup> Salesforce/Tableau,<sup>278</sup> and Amazon/Deliveroo.<sup>279</sup>

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<sup>271</sup> Microsoft / Activision Blizzard merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>272</sup> Facebook, Inc (now Meta Platforms, Inc) / Giphy, Inc merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>273</sup> Facebook, Inc (now Meta Platforms, Inc) / Giphy, Inc merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>274</sup> Booking Holdings Inc / eTraveli Group AB merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>275</sup> Facebook, Inc./ Kustomer, Inc. - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>276</sup> Uber Technologies, Inc. / GPC Software Limited (Autocab) merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>277</sup> Google LLC / Looker Data Sciences, Inc merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>278</sup> Salesforce.com, Inc. / Tableau Software Inc merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>279</sup> Amazon / Deliveroo merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))



As highlighted in the updated Merger Assessment Guidelines and in the CMA’s recent practice, innovation competition, future competition, and dynamic competition can be particularly relevant considerations when assessing mergers in digital markets.<sup>280</sup>

In May this year, the CMA launched an initial review into AI Foundation Models<sup>281</sup> to help create an early understanding of the market for foundation models and how their use could evolve; what opportunities and risks these scenarios could bring for competition and consumer protection; and what competition and consumer protection principles will therefore best guide the development of these markets going forward. The goal of the initial review was to help this emergent and rapidly scaling technology develop in ways that result in open, competitive markets that will continue to bring benefits for people, businesses and the economy in the UK. The review was focused on three themes: 1) competition and barriers to entry in the development of foundation models; 2) the impact foundation models may have on competition in other markets; and 3) consumer protection. The report was published on 18 September 2023 including proposed guiding principles to help ensure competition and consumer protection remain a driving force in the development and deployment of foundation models.<sup>282</sup>

The CMA has previously undertaken year-long market study into mobile ecosystems, which investigated whether Apple and Google’s powerful position in relation to the supply of operating systems, app stores, and web browsers on mobile devices is resulting in harm to consumers. The final report was published in June 2022 concluding that Apple and Google have an effective duopoly on mobile ecosystems that allows them to exercise a stranglehold over these markets.<sup>283</sup>

In January 2023, the CMA completed its market study into music and streaming services, which considers the supply of music, from the creators of music through to the consumer, in particular via music streaming services.<sup>284</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).**

One of the key initiatives the CMA has taken to strengthen its ability to tackle competition issues in digital markets is the establishment of its Data, Technology and

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<sup>280</sup> [Merger Assessment Guidelines \(CMA129\) - GOV.UK \(www.gov.uk\)](#)

<sup>281</sup> [AI Foundation Models: initial review - GOV.UK \(www.gov.uk\)](#)

<sup>282</sup> [AI Foundation Models: Initial report - GOV.UK \(www.gov.uk\)](#)

<sup>283</sup> [Mobile ecosystems market study - GOV.UK \(www.gov.uk\)](#)

<sup>284</sup> [Music and streaming market study: final report - GOV.UK \(www.gov.uk\)](#)



Analytics (DaTA) unit. Today, it comprises nearly 60 data engineers, data scientists, data and technology insight advisors, digital forensics and eDiscovery specialists, and behavioural scientists, and is continuing to grow. The DaTA unit provides expert data and technology advice, data acquisition and data science capabilities, data-driven tool development, behavioural science capabilities, and research, horizon scanning, and case pipeline development.

The DaTA unit is embedded in teams working on complex merger investigations, market studies, antitrust, and consumer cases. For example, the DaTA unit assisted the CMA's consumer cases against Amazon and Google in relation to fake online reviews. The unit played a key role in requesting large amounts of data, analysing it and reviewing the approach that these companies used to identify this type of content using machine learning. In relation to mergers, the DaTA unit has developed specific data or technology focused theories of harm, helped case teams understand technical digital markets, and assessed technical remedies. The DaTA unit has also enabled case teams to efficiently gather and review very large volumes of parties' internal documents, by developing the CMA's in-house Evidence Submission Portal, and supporting case teams to design effective document review strategies. The DaTA unit is also co-leading the initial review into AI Foundation Models.

The DaTA unit's Behavioural hub published a paper in April 2023 discussing how and when the CMA uses field and online experiments and held a webinar on the topic in June 2023. In addition, the unit contributed to the Digital Regulation Cooperation Forum's workshops on transparency in the procurement of algorithmic systems and production of the findings paper,<sup>285</sup> and the insights papers on web3<sup>286</sup> and quantum technologies.<sup>287</sup>

With its unique technical expertise, the DaTA unit is helping the Digital Markets Unit, currently operating in shadow form, to horizon-scan and identify the potential impact of new technologies and business practices on market dynamics.

The CMA has appointed nine Digital Experts as independent advisors to support our ongoing work in digital markets, as well as preparations for the new regime. Collectively, these specialists have expertise and experience working at the forefront of technological innovation, online competition and tackling the dominance of some of the world's most

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<sup>285</sup> [Transparency in the procurement of algorithmic systems: Findings from our workshops - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>286</sup> [Insight Paper on Web3 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>287</sup> [Quantum Technologies Insights Paper | DRCF](#)



powerful firms.<sup>288</sup> The experts bring independent insight, complementing the CMA's internal expertise and will support the CMA in maintaining a detailed understanding of the dynamics and operation of digital markets.<sup>289</sup>

The CMA is also piloting a Digital Markets Summer Diversity Internship aimed at individuals from groups currently underrepresented at the CMA, to help build a diverse talent pipeline in the long-term and better represent the consumers it serves.

**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 better tackle competition issues in digital markets: first, reforms to the CMA's existing competition and consumer powers, to ensure they are better adapted for the digital age and second, the introduction of a new ex ante pro-competition regime for digital markets. These reforms are being taken forward by the Digital Markets Competition and Consumers Bill, which was introduced in the UK Parliament in April 2023.<sup>290</sup>

In relation to the first area, these include improving and strengthening the CMA's powers in relation to the market investigation process, merger reviews, and investigations into anticompetitive conduct. The reforms would also involve updating the UK's consumer protection framework more effectively to tackle the changes in consumer markets, particularly the rapid increase in online commerce. This includes introducing specific reforms on online reviews and subscription traps, empowering the CMA to enforce consumer law directly (as opposed to through the courts), and introducing fining powers for breaches of consumer law.

In relation to the ex-ante pro-competition regime for digital markets, this will be overseen by the Digital Markets Unit (DMU) within the CMA. It will apply to firms that the CMA designate as having Strategic Market Status. Firms will be designated with Strategic Market Status if they are found to have substantial and entrenched market power in at least one digital activity, which provides them with a strategic position. These designated firms will be subject to enforceable conduct requirements, which will set out how firms are expected to behave in respect of the activities in which they have been designated. In addition to enforcing conduct requirements, the DMU will have the power to impose pro-

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<sup>288</sup> [Biographies of the CMA's independent digital experts - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>289</sup> [Experts appointed as UK looks to level digital playing field for consumers - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>290</sup> [Digital Markets, Competition and Consumers Bill - Parliamentary Bills - UK Parliament](https://www.parliament.uk)



competitive interventions on designated firms. Examples of pro-competitive interventions include requiring, for instance, designated firms to provide fair access to data and the ability to enforce interoperability between platforms or services. Lastly, the CMA will have increased visibility over mergers involving designated firms as they will have to report their most significant transactions prior to completion. The DMU will continue to support the UK Government as the legislation progresses.

In parallel, the DMU is undertaking a range of activities as part of preparing to implement the new regime. This includes evidence-gathering on digital markets, recruitment of additional staff and engaging with stakeholders across industry, academia, other regulators, and government.

**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**

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 investigating fake and misleading reviews on Google and Amazon and investigating the disclosure of paid for endorsements on social media platforms. In 2022, the CMA’s consumer law investigation into auto-renewal practices in the online gaming sector led to the CMA securing undertakings from Microsoft and Sony, and Nintendo adequately changing its business practices. In 2022, the CMA also launched a programme of work to tackle potentially harmful online selling practices<sup>291</sup> and launched enforcement cases investigating the use of online selling practices based on ‘urgency claims’ (such as countdown clocks) by the Emma Group<sup>292</sup> and the Wowcher Group.<sup>293</sup> The CMA also issued compliance advice for online businesses covering the use of urgency and price reduction claims and launched a consumer campaign to raise consumer awareness of misleading online sales practices.

The CMA is committed to ensuring its work to promote competition in digital markets is coherent with wider regulatory regimes in the UK. The CMA is a founding member of the Digital Regulation Cooperation Forum (DRCF), which was established in 2020 to ensure coordination and cooperation between regulators in digital markets.

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<sup>291</sup> [Online choice architecture work - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>292</sup> [Emma Group: consumer protection case - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>293</sup> [Wowcher Group: consumer protection case - GOV.UK \(www.gov.uk\)](https://www.gov.uk)



The CMA, alongside the other DRCF member regulators, the Office of Communications, the Information Commissioner’s Office, and the Financial Conduct Authority, work together to ensure coherence between their respective regimes, collaborate on projects, and build capacity across regulators to deliver effective digital regulation. In 2023-2024, the DRCF’s focus is on encouraging best practice around the regulation and audit of algorithms and artificial intelligence, including supporting government as it develops its new AI regulation framework, horizon scanning to predict and prepare for emerging technological trends, and enabling innovation by jointly researching and piloting a multi-agency advice service for digital innovators.<sup>294</sup> The DRCF engages with a wide range of stakeholders and has recently held events on topics such as Web3<sup>295</sup>, metaverses<sup>296</sup>, algorithmic processing<sup>297</sup>, and quantum computing.<sup>298</sup>

As part of the CMA’s work through the DRCF, the CMA has published a joint statement with Ofcom setting out our shared views on the relationship between competition and online safety in digital markets.<sup>299</sup> The CMA has also published a joint statement with the Information Commissioner’s Office on the relationship between competition and data.<sup>300</sup> In addition, the CMA is engaging with international agencies with a similar cross-regulatory focus to the DRCF through the recently established International Network for Digital Regulation Cooperation (INDRC), which includes Australia, Ireland and The Netherlands as founding members.

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<sup>294</sup>The DRCF publishes its 2023/24 Workplan | DRCF

<sup>295</sup> [Web 3.0 and distributed ledger technologies – A regulatory perspective - Competition and Markets Authority \(blog.gov.uk\)](#)

<sup>296</sup> [The Metaverse and immersive technologies – A regulatory perspective - Competition and Markets Authority \(blog.gov.uk\)](#)

<sup>297</sup> [Findings from the DRCF Algorithmic Processing workstream - Spring 2022 - GOV.UK \(www.gov.uk\)](#)

<sup>298</sup> [A closer look at quantum technologies | DRCF](#)

<sup>299</sup> [CMA-Ofcom joint statement on online safety and competition - GOV.UK \(www.gov.uk\)](#)

<sup>300</sup> [CMA-ICO joint statement on competition and data protection law - 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.**

### *Enforcement*

Merger enforcement is the first-line defense against unlawful consolidation and the primary enforcement tool to prevent market structures that give rise to monopolization and tacit coordination. The FTC devotes significant enforcement resources to checking unlawful deals that threaten long-term harm in emerging and nascent digital markets.

The FTC's most prominent recent digital merger challenge was the August 2022 challenge of Meta's proposed acquisition of Within Unlimited, Inc., a virtual reality development studio. The FTC alleged that Meta, by virtue of being a key player at each level of the VR sector, was a potential entrant in the VR dedicated fitness app market where Within's Supernatural is the top seller. While the US federal judge ruled that the FTC had met its burden in showing that the virtual reality fitness app market is highly concentrated, he found that the FTC did not prove there was a reasonable probability that Meta would enter the market independently. As a result, the judge did not grant a preliminary injunction to stop the acquisition and the FTC decided to not pursue an appeal or further litigation. Despite the loss, the case advances the law for future cases involving emerging digital markets, specifically surrounding the standards required to succeed in a potential competition case. Importantly, the court rejected Meta's argument that there could be no competition concern in new, fast-growing markets, finding that competition law has an important role to play in new markets with recent entry. Moreover, the FTC's market definition was validated in ways that can be helpful in future digital merger cases, with the court relying on traditional qualitative factors to find a relevant market for VR dedicated fitness apps.

Aspects of digital and tech markets increasingly impact the competition analysis in an array of industries, as seen in other recent FTC merger challenges. For example, the [FTC took action to block the proposed merger](#) between Intercontinental Exchange and its main rival, Black Knight, the two top mortgage technology loan providers. The two provide home mortgage loan origination systems, software that is used to manage the documents and workflow required to generate and service mortgages. The FTC argued that the merger would increase costs, hinder innovation, and limit lenders' options for the necessary software tools to facilitate mortgage generation and servicing, leading to higher costs for lenders and homebuyers. The FTC [secured a settlement](#) that resolved the antitrust concerns. The FTC is also [seeking to block](#) technology giant Microsoft Corp. from acquiring leading video game developer Activision Blizzard, Inc. alleging that the deal





would enable Microsoft to suppress competitors to its gaming consoles and its rapidly growing subscription content and cloud-gaming business.

In the conduct area, the FTC continues to scrutinize digital markets, recognizing that distinct features of digital technologies have ushered in new market dynamics and business strategies that require us to update the agency's enforcement approach and ensure the law is keeping pace. The FTC's investigations in digital markets recognize the critical role of data, network externalities, moat-building strategies, and other key factors to make sure the FTC's enforcement is reflecting commercial realities.

In 2023, [the FTC and 17 state attorneys general sued Amazon.com](#), Inc. alleging that the online retail and technology company is a monopolist that uses a set of interlocking anticompetitive and unfair strategies to illegally maintain its monopoly power. The [complaint alleges](#) that Amazon engages in a course of exclusionary conduct that prevents competitors from growing and new competitors from emerging. The complaint alleges Amazon's anticompetitive conduct occurs in two markets—the online superstore market that serves shoppers and the market for online marketplace services purchased by sellers. Amazon's tactics include anti-discounting measures that punish sellers and deter other online retailers from offering prices lower than Amazon, and conditioning sellers' ability to obtain "Prime" eligibility for their products on sellers using Amazon's costly fulfillment service. Amazon's exclusionary conduct makes it impossible for competitors to gain a foothold and its amassed power enables it to degrade the customer experience, bias search results to preference Amazon's own products, and charge costly fees on sellers.

Notably, the FTC's litigation against Facebook (d/b/a/ Meta) also continues. The lawsuit, in addition to other forms of relief, seeks the divestment of Instagram and WhatsApp. The amended complaint placed greater emphasis on the competitive importance of data and noted privacy degradation constitutes an antitrust harm (which the court had also acknowledged) and survived a motion to dismiss in US federal court.

The FTC also continues its litigation against Surescripts, an e-prescription giant. Filed in 2019, the FTC alleges that Surescripts intentionally set out to keep e-prescription customers from using additional platforms (a practice known as multihoming) using anticompetitive exclusivity agreements, threats, and other exclusionary tactics, and that the result has been the total exclusion of all meaningful competition in routing and eligibility, higher prices, reduced innovation, lower output, and no customer choice. In 2023, the US District Court granted the FTC's request for summary judgment, finding Surescripts has monopoly power in two markets, e-prescription routing and eligibility. The FTC won approval to move forward with the case. Despite the company removing certain provisions at issue in its contracts, the judge determined that Surescripts' new contracts could still be anticompetitive.





In December 2022, relying on a US law that specifically prohibits debit card networks from establishing exclusivity, the [FTC ordered Mastercard](#) to stop blocking the use of competing debit payment networks and end its illegal business tactics to force merchants to route debit card payments through its payment network. The FTC alleged that Mastercard illegally set policies that blocked merchants from routing ecommerce transactions using Mastercard-branded digital debit cards saved in ewallets to competing payment card networks. This was achieved through Mastercard’s power over a process called “tokenization,” which involves replacing a cardholder’s primary account number with a different number to safeguard the information during certain stages of a debit transaction. This illegal tactic impeded merchants from routing debit transactions through competing payment card networks.

### *Other Tools*

In addition to individual enforcement actions, a significant portion of FTC’s efforts are devoted to providing guidance to companies about what the law requires to deter unlawful deals and anticompetitive conduct. Among other initiatives, this includes launching a revision of the merger guidelines and issuing a policy statement on the FTC’s unique Section 5 authority, as well other projects focused on a specific technology, conduct, or industry.

In July 2023, [the FTC and DOJ released new draft U.S. merger guidelines](#) following a comprehensive review . A goal in preparing the new guidelines is ensuring that the frameworks accurately reflect the realities of the modern economy. The review evaluated how to account for certain features of digital markets such as zero-price dynamics and the competitive significance of data. The new guidelines also recognize and address issues unique to platform merger analysis and their likelihood to involve issues of scale and network effects, gatekeeping, leveraging, consumer lock-in and market tipping. The FTC and DOJ also recently [proposed changes to the U.S. premerger notification form and associated instructions](#). Some of the changes to better identify horizontal overlaps and vertical relationships address the challenge of investigating mergers that involve technology and digital platforms. These dynamic markets often rely on acquisition strategies for success and market growth. Merger activity in these sectors increasingly involves firms in related business lines where agencies must closely examine the potential for direct competition in the future.

The FTC is also reinvigorating its unique authority under Section 5 of the Federal Trade Commission Act that allows the agency to prohibit unfair methods of competition that may fall outside the purview of other antitrust laws. Last year, the [FTC issued a policy statement on Section 5](#) that reflects the legislative text, structure, the history of the statute, and the case law. The statement puts businesses on notice about how to



compete fairly and legally in the market, taking unfairness seriously as a normative framework and aiming to minimize the open-ended balancing of the rule of reason in favor of clear defensible bright line rules whenever possible. Because the statute seeks to stop unfair conduct in its incipiency, prior to the existence of monopoly power, depending on the facts of the case, it is well suited to address harms in digital markets.

An example from the FTC's research and market study agenda is the 2023 launch of an [inquiry into business practices by cloud computing providers](#), seeking comments on the potential impact on competition and data security. Cloud computing is used for on-demand access to data storage, servers, networks, and much more. As large sectors across the economy continue to heavily rely on cloud computing services, the FTC wants to better understand the impact of this reliance, the competitive dynamics in cloud computing, and the potential for security risks while using cloud services.

**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).**

Alongside enforcement, the FTC is making long-term investments to maximize the impact of its work. To tackle the pressing issues of today and tomorrow, the agency is broadening its institutional skillsets to ensure the agency is fully grasping market realities, especially as the economy becomes increasingly digitized. [The Office of Technology was recently created](#) to support the FTC's mission in promoting competition and protecting consumers by expanding its in-house technical expertise. The Office supports the agency with the skills needed to better understand evolving technologies and market trends. Its staff of technologists and computer/data scientists support law enforcement investigations and actions, advise and engage on policy and research initiatives, and highlight market trends and emerging technologies that affect the FTC's mission in areas such as: advertising technology, artificial intelligence, augmented and virtual reality, cloud computing, data science and data analysis, digital platforms and ecosystems, human computer interaction design, investigative research, privacy, security, product management, prototyping, social science research or fieldwork, software engineering, user experience design and user research.

**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 noted in previous G7 Compendiums, U.S. President Biden issued an Executive Order on Promoting Competition in the American Economy that recognizes a whole-of-government approach needed to urgently tackle unhealthy concentration and unfair methods of competition across the economy. Consistent with the goals of the Order, the FTC has entered into cooperation agreements with key agencies, such as the National Labor Relations Board, and consulted with several executive branch agencies to issue reports on the competitiveness of certain sectors of the economy including a U.S. Treasury report on the state of labor market competition in the United States and a Department of Commerce study of the mobile app ecosystem.

The United States Congress continues to consider several proposed laws related to digital competition, ranging from broad-based antitrust reforms to narrowly targeted bills that address topics such as platform discrimination, interoperability, and self-preferencing. 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 seeks to improve coordination across competition, consumer protection, and privacy activities and apply an integrated approach to the agency’s 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. Examples of intersection issues over the past year, across the digital-related work of the FTC, include:

- Competition. As mentioned above, the FTC’s amended complaint against Facebook alleges that increased concentration in a market may lead to lower levels of service quality in areas such as privacy and data protection.
- Consumer protection and privacy. The FTC recently [took action against Amazon for duping consumers into its Prime subscription program](#) without their consent and making it difficult to cancel their subscription. The FTC alleges that Amazon violated the FTC Act and the Restore Online Shoppers’ Confidence Act by specifically using “dark



patterns” to trick millions of consumers into enrolling in auto-renew Prime subscriptions. In early 2023, upon Amazon’s acquisition of One Medical, the [FTC issued a statement](#) about the representations that the parties made to the public about privacy and the use of consumers’ personal health information. The statement asserted that the representations constitute promises to consumers about the collection and use of their data by the post-acquisition entity and failure to abide by the representations can violate the law.

- Policy Statements. In September, the FTC adopted a [policy statement](#) that outlines its authority to combat consumer protection and competition issues facing gig workers, including deception about pay and hours, unfair contract terms, and anticompetitive wage fixing and coordination between gig economy companies. The statement notes that an “integrated approach to investigating unfair, deceptive, and anticompetitive conduct is especially appropriate for the gig economy, where law violations often have cross-cutting causes and effects.”
- Rulemaking. In August, the [FTC took its first step in initiating a rulemaking proceeding on commercial surveillance](#), inviting public comments and announcing that the agency is exploring rules to address the harms stemming from commercial surveillance and lax data security. Commercial surveillance is the business of collecting, analyzing, and profiting from information about people. Mass surveillance has heightened the risks and stakes of data breaches, deception, manipulation, and other abuses.
- Market inquiry. As mentioned above, the [FTC launched an inquiry into business practices by cloud computing](#) providers and invited public comment on their potential impact on both competition and data security. The inquiry aims to help the FTC to better understand the competitive dynamics in cloud computing as well as its the potential for security risks, including single points of failure, in the use of cloud.



## 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.**

### Enforcement Actions

The Antitrust Division's lawsuit against Google for monopolizing search and search advertising, filed in October 2020, continues.<sup>301</sup> Trial began in September 2023 and it expected to conclude in November 2023, with the District Court's decision expected at some point after that.

In January 2023, the Antitrust Division sued Google for monopolizing digital advertising technologies.<sup>302</sup> The complaint alleges that over the past 15 years Google has engaged in a course of anticompetitive and exclusionary conduct that consisted of neutralizing or eliminating ad tech competitors through acquisitions; wielding its dominance across digital advertising markets to force more publishers and advertisers to use its products; and thwarting the ability to use competing products. In doing so, Google cemented its dominance in tools relied on by website publishers and online advertisers, as well as the digital advertising exchange that runs ad auctions.

In April 2023, the Division filed a civil antitrust lawsuit against Activision Blizzard, Inc. (Activision), one of the world's largest video game developers and publishers, for imposing rules that limited competition for players in Activision's *Overwatch* and *Call of Duty* professional esports leagues and suppressed the wages of esports players in these leagues in violation of the Sherman Act.<sup>303</sup> The District Court entered a consent decree to address the Division's competition concerns.

The Antitrust Division continues to pursue criminal charges for price fixing in online markets. In February 2023, two Amazon marketplace sellers and four of their companies pleaded guilty to price fixing DVDs and Blue Ray Discs.<sup>304</sup> In January 2022, three sellers

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<sup>301</sup> <https://www.justice.gov/atr/case/us-and-plaintiff-states-v-google-llc>.

<sup>302</sup> <https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies>.

<sup>303</sup> <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decree-prohibit-activision-blizzard>.

<sup>304</sup> <https://www.justice.gov/opa/pr/two-amazon-marketplace-sellers-and-four-companies-plead-guilty-price-fixing-dvds-and-blu-ray>.



pleaded guilty to fixing prices of DVDs and Blu-Ray Discs sold on Amazon Marketplace.<sup>305</sup> In July 2021, another seller pleaded guilty to similar charges.<sup>306</sup>

### Merger Guidelines Review

In July 2023, [the FTC and DOJ released new draft U.S. merger guidelines](#) following a comprehensive review.<sup>307</sup> A goal in preparing the new guidelines is ensuring that the frameworks accurately reflect the realities of the modern economy. The review evaluated how to account for certain features of digital markets such as zero-price dynamics and the competitive significance of data. The new guidelines also recognize and address issues unique to platform merger analysis and their likelihood to involve issues of scale and network effects, gatekeeping, leveraging, consumer lock-in and market tipping.

In June 2023, the FTC and DOJ [proposed changes to the U.S. premerger notification form and associated instructions](#).<sup>308</sup> Some of the changes to better identify horizontal overlaps and vertical relationships address the challenge of investigating mergers that involve technology and digital platforms. These dynamic markets often rely on acquisition strategies for success and market growth. Merger activity in these sectors increasingly involves firms in related business lines where agencies must closely examine the potential for direct competition in the future.

### Amicus Program

The Antitrust Division has provided expert input to courts on matters involving large digital platforms via our amicus program. In *State of New York, et al. v. Facebook, Inc.*, for example, we filed an amicus brief concerning the improper extension and misapplication of refusal-to-deal standards.<sup>309</sup> In *Epic Games, Inc. v. Apple, Inc.*, we filed an amicus brief concerning concerted action, balancing anticompetitive and procompetitive effects, the measurement of monopoly power, and market definition.<sup>310</sup> And in *District of Columbia v.*

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<sup>305</sup> <https://www.justice.gov/opa/pr/three-amazon-marketplace-sellers-plead-guilty-price-fixing-dvds-and-blu-ray-discs-ongoing>.

<sup>306</sup> <https://www.justice.gov/opa/pr/amazon-marketplace-seller-pleads-guilty-price-fixing-dvds-and-blu-ray-discs>.

<sup>307</sup> <https://www.justice.gov/opa/pr/justice-department-and-ftc-seek-comment-draft-merger-guidelines>

<sup>308</sup> <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>

<sup>309</sup> <https://www.justice.gov/media/1188646/dl?inline>.

<sup>310</sup> <https://www.justice.gov/media/1187806/dl?inline>.



Amazon.com, Inc., we filed a statement of interest regarding concerted action and how to evaluate the reasonableness of contractual restraints.<sup>311</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).**

US-EC TPCD

In December 2021, the Division and the U.S. Federal Trade Commission initiated a Technology Policy Competition Dialogue with the European Commission to discuss competition issues in digital markets.<sup>312</sup> In October 2022, the EC, U.S. Federal Trade Commission, and the DOJ held a second dialogue during which they discussed the importance of horizon scanning, remedies in digital cases, and the U.S. merger guidelines review.<sup>313</sup> In March 2023, the EC, U.S. Federal Trade Commission, and the Division held a third dialogue during which they discussed mergers between digital players, abuse of dominance and monopolization in digital markets, and recent digital markets policy initiatives. They also discussed the evolving business strategies of tech firms and their implications for enforcement.<sup>314</sup>

Data Analytics Project

The Division's Procurement Collusion Strike Force (PCSF) has undertaken a Data Analytics Project, which seeks to facilitate collaboration across the U.S. law enforcement community in developing and using data analytics to identify potential criminal anticompetitive collusion in government procurement data. The PCSF advises government agencies on how to use data to build analytical tools to detect collusion. It

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<sup>311</sup> <https://www.justice.gov/atr/case-document/file/1497791/download>.

<sup>312</sup> <https://www.justice.gov/opa/pr/justice-department-federal-trade-commission-and-european-commission-issue-joint-statement>; <https://www.justice.gov/opa/press-release/file/1453916/download>.

<sup>313</sup> <https://www.justice.gov/opa/pr/justice-department-federal-trade-commission-and-european-commission-hold-second-us-eu-joint>.

<sup>314</sup> <https://www.justice.gov/opa/pr/justice-department-federal-trade-commission-and-european-commission-hold-third-us-eu-joint-0>.



also trains data scientists, analysts, auditors, and investigators on detecting patterns and red flags indicating collusion.<sup>315</sup>

### Staff Hiring

The Division continues to build out its digital markets expertise by assembling a diverse community of experts with a wide range of complementary skills related to digital markets. Dr. Susan Athey, a noted technology economist at Stanford University and former Chief Economist at Microsoft, joined the Division in 2021 as its Chief Economist, leading our Expert Analysis Group (EAG).<sup>316</sup> In 2022, the Division hired Ph.D. data scientist Laura Edelson as its Chief Technologist serving within EAG.<sup>317</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.**

### Legislation

The United States Congress continues to consider several proposed laws related to digital competition, ranging from broad-based antitrust reforms to narrowly targeted bills that address topics such as platform non-discrimination, interoperability, self-preferencing, structural separation, and compensation for news content. 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. In March 2022, the Department issued a letter in support of the American Innovation and Choice Online Act, which would prohibit discriminatory conduct by dominant platforms.<sup>318</sup>

### Executive Order on Competition

In July 2021, 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

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<sup>315</sup> <https://www.justice.gov/atr/division-operations/division-update-spring-2021/pcsf-expansion-and-early-success>.

<sup>316</sup> <https://hai.stanford.edu/news/technology-economist-susan-athey-adds-doj-role-her-multidimensional-career>.

<sup>317</sup> <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-antitrust-division-delivers-keynote-fordham>.

<sup>318</sup> Department Views Letters on S.2992, the American Innovation and Choice Online Act, and H.R.3816, the American Innovation and Choice Online Act ([justice.gov](https://www.justice.gov)).





agencies intended to address pressing competition problems in the US economy, including “a small number of dominant Internet platforms [that] 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.” 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 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.<sup>319</sup> The Department participates in regular meetings with the other agencies identified in the Executive Order to share updates regarding the execution of this mandate.

**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 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 digital markets. In addition, the Division often provides input to regulatory agencies whose responsibilities may touch on digital markets competition. 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 digital markets competition.

#### Comments to NTIA.

In March 2023, the Division submitted comments to the National Telecommunications and Information Administration (NTIA) in response to its Request for Comment addressing issues at the intersection of privacy, equity, and civil rights.<sup>320</sup> The Division’s comments focused on the role that competition can play in ensuring privacy in digital markets.

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<sup>319</sup> [Executive Order on Promoting Competition in the American Economy | The White House.](#)

<sup>320</sup> [https://www.justice.gov/atr/page/file/1573126/download.](https://www.justice.gov/atr/page/file/1573126/download)

## 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>321</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 acquisition of WhatsApp (2014)<sup>322</sup>, Microsoft’s acquisition of LinkedIn (2016)<sup>323</sup>, Apple’s acquisition of Shazam (2018)<sup>324</sup>, Google’s acquisition of Fitbit (2020)<sup>325</sup>, Meta’s acquisition of Kustomer (2022)<sup>326</sup>, Amazon’s acquisition of MGM (2022),<sup>327</sup> Google’s acquisition of Photomath (2023)<sup>328</sup>, Microsoft’s acquisition of Activision Blizzard (2023)<sup>329</sup> Broadcom’s acquisition of VMware<sup>330</sup> and Booking’s acquisition of eTraveli.<sup>331</sup> In the latter case the Commission prohibited the transaction, whereas in other cases 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, (iii) access remedies, for example to APIs, thus ensuring access to inputs

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<sup>321</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0139>

<sup>322</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_1088](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_1088)

<sup>323</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_4284](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_4284)

<sup>324</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_5662](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5662)

<sup>325</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2484](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2484)

<sup>326</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_652](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_652)

<sup>327</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1762](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1762)

<sup>328</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_1927](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1927)

<sup>329</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_2705](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2705)

<sup>330</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_3777](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_3777)

<sup>331</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_4573](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4573)

necessary to the continued provision of competing products of services or licensing remedies, providing for the licensing of technology to ensure that technology essential for third parties does not remain concentrated in the hands of the merged entity, and instead markets remain competitive.

The Commission has also adopted a high number of antitrust decisions in the digital sector, including on Microsoft Internet Explorer<sup>332</sup> and more recently, on Google Shopping,<sup>333</sup> Qualcomm<sup>334</sup>, Android<sup>335</sup> and AdSense.<sup>336</sup> While the Qualcomm fine was annulled by the General Court of the European Union,<sup>337</sup> on 10 November 2021 the General Court of the European Union confirmed the Commission's June 2017 decision that Google abused its market dominance in general search by treating its own comparison shopping service more favourably than competing comparison shopping services.<sup>338</sup> On 14 September 2022 the General Court of the European Union also largely confirmed the Commission's decision of July 2018 according to which Google imposed unlawful restrictions on manufacturers of Android mobile devices and mobile network operators in order to consolidate the dominant position of its search engine.<sup>339</sup>

The Commission is also still investigating several cases in the sector, notably Apple's App Store<sup>340</sup> and Apple Pay<sup>341</sup>. The European Commission has also issued Statement of Objections regarding possible abuse of dominance practices by Google (June 2023)<sup>342</sup> and Meta (December 2022)<sup>343</sup> in the advertising intermediation and classified ads field, respectively. The Commission also opened an investigation to assess Microsoft's tying of its communication and collaboration product Teams to its business suites.<sup>344</sup>

In December 2022, the Commission closed its *Amazon Marketplace* and *Amazon Buy Box* investigations<sup>345</sup> following the acceptance of commitments by Amazon.<sup>346</sup> In the

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<sup>332</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_09\\_1941](https://ec.europa.eu/commission/presscorner/detail/en/IP_09_1941)

<sup>333</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_1784](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1784)

<sup>334</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_421](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_421)

<sup>335</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4581](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581)

<sup>336</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_1770](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1770)

<sup>337</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-06/cp220099en.pdf>

<sup>338</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-11/cp210197en.pdf>

<sup>339</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-09/cp220147en.pdf> and

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_1217](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1217)

<sup>340</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_1217](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1217)

<sup>341</sup> [https://ec.europa.eu/commission/presscorner/detail/es/ip\\_22\\_2764](https://ec.europa.eu/commission/presscorner/detail/es/ip_22_2764)

<sup>342</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3207](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3207)

<sup>343</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7728](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7728)

<sup>344</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3991](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3991)

<sup>345</sup> [https://ec.europa.eu/commission/presscorner/detail/fr/ip\\_20\\_2077](https://ec.europa.eu/commission/presscorner/detail/fr/ip_20_2077) and

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

<sup>346</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7777](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7777)

*Marketplace* case, the Commission found that that Amazon's reliance on marketplace sellers' non-public business data to calibrate its retail decisions, distorted fair competition on its platform and prevented effective competition. In the *Buy Box* case, the Commission preliminarily concluded that Amazon's rules and criteria for the Buy Box and Prime unduly favour its own retail business, as well as marketplace sellers that use Amazon's logistics and delivery services. Among others, Amazon commits to refrain from using non-public seller data to the benefit of its retail operations when competing with third-party sellers and to apply non-discriminatory conditions and criteria when ranking sellers' offers and selecting the winner of the Buy Box. The offered commitments cover all Amazon's current and future marketplaces in the European Economic Area. They exclude Italy for the commitments relating to the Buy Box and Prime in view of the decision of 30 November 2021 of the Italian competition authority imposing remedies on Amazon with regard to the Italian market. The final commitments will remain in force for seven years in relation to Prime and the display of the second competing Buy Box offer, and five years for the remaining parts of the commitments. The commitments entered into force on 21 June 2023, following a 6-months implementation period.

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. The sector inquiry concluded on 20 January 2022 with the publication of a final report identifying potential competition concerns in the market.<sup>347</sup> Among the main findings, the report identified concerns by stakeholders concerning exclusivity and tying practices, intermediation practices, access to data and lack of interoperability issues.

A revision of the Commission's Market Definition Notice<sup>348</sup> is also underway. The draft revised Notice (published for public consultation during Autumn 2022) contains a number of references to the specificities to be taken into account when defining markets in the digital economy.<sup>349</sup>

The Commission also recently adopted the new Vertical Block Exemption Regulation and Vertical Guidelines,<sup>350</sup> and the new Horizontal Block Exemption Regulations and Horizontal Guidelines,<sup>351</sup> in May 2022 and June 2023 respectively. These new regulations

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<sup>347</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_402](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_402)

<sup>348</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31997Y1209%2801%29>

<sup>349</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13308-EU-competition-law-updating-the-market-definition-notice-revision-\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13308-EU-competition-law-updating-the-market-definition-notice-revision-_en)

<sup>350</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_2844](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2844)

<sup>351</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_2990](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_2990)



and guidelines have been updated to also cater for market developments and realities in the digital sector.

Importantly, on 1 November 2022, the Digital Markets Act (DMA) entered into force and is applicable as of 2 May 2023. More information on this piece of legislation is presented below.

**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>352</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 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 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. Since 16 January 2023, the Unit – denominated Data Analysis and Technology –

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<sup>352</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)



reports to the recently established Chief Technology Officer (CTO).<sup>353</sup> The Unit pools professional enforcers specialised in data and computer science, intelligence analysis, economic and financial investigations and IT security working in synergy in a multidisciplinary environment as well as forensic IT specialist. These digital skills enhance DG COMP's detection and prosecution capabilities to better tackle the companies' use of new technologies, AI solutions and data practices that may infringe competition law or not be in line with regulations such as the DMA. The mission of the Unit is to perform advanced digital investigation activities, gather intelligence and provide Forensic IT support to the Directorate General. Overall, the Unit is responsible for ensuring DG Competition's ever-increasing needs for state-of-the-art digital solutions/methodologies to support enforcement activities across various instruments. The CTO Unit works in close collaboration with many other departments in DG Competition, as well as other Directorates-General in the European Commission, other European Institutions and Member States. The Chief Technology Officer, who reports directly to the Director-General, advises the Commissioner responsible for Competition and the Director-General on DG Competition's digital strategy. The CTO also guides and oversees all data-related and other digital projects, initiatives and work streams for DG Competition.

Moreover, the Commission, both DG COMP and the DG for Communications Networks, Content and Technology (DG CNECT), have put into place the relevant structures to ensure that the enforcement of the Digital Markets Act is fully operational from day one to prepare, inter alia, enforcement decisions, implementing/delegated acts,<sup>354</sup> guidelines and reports. In addition, the DMA also allows the Commission to draw on the expertise and assistance of Member States authorities and to appoint external experts. To this end, the Commission has already set up new bodies envisaged in the DMA, including the Digital Markets Advisory Committee with Member State representation which will assist the Commission for the enforcement of DMA and the High-Level Group for enforcement established by Article 40 of the Digital Markets, composed of competition, telecom, media, consumer and data protection bodies/networks (for additional information about this Group see also below at page 101).

**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**

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<sup>353</sup> The Commission is in the process of selecting a CTO.

<sup>354</sup> For example, on 14 April 2023, the Commission adopted an Implementing Regulation for the DMA which lays down procedural rules, including notifications and submissions of information, the protection of confidential information, access to file and time limits.



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

At the level of the European Union, on 11 November 2022, Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828,<sup>355</sup> better known as the Digital Markets Act (DMA), entered into force and is applicable as of 2 May 2023. The DMA aims to protect openness and innovation in digital markets. It does so by prohibiting certain unfair practices by large gatekeeper platforms that have proven harmful and by enhancing the contestability of digital markets.

The DMA defines when a large online platform qualifies as a “gatekeeper”. These are digital platforms that provide an important gateway between business users and consumers – whose position can grant them the power to act as a private rule maker, and thus creating a bottleneck in the digital economy.

Companies operating one or more of the so-called “core platform services” (“CPS”) listed in the DMA<sup>356</sup> qualify as a gatekeeper if they meet three (cumulative) quantitative criteria for designation which are proxies for gatekeeper’s characteristics, namely, (a) significant impact on the internal market<sup>357</sup>, (b) service is an important gateway<sup>358</sup>, (c) the gatekeeper has an entrenched and durable position<sup>359</sup>).

If such quantitative thresholds are met, the company concerned is presumed to be a gatekeeper, unless it submits sufficiently substantiated arguments to demonstrate the contrary.<sup>360</sup> Conversely, if not all of the above-mentioned quantitative thresholds are

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<sup>355</sup> OJ L 265, 12.10.2022, p. 1, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2022.265.01.0001.01.ENG&toc=OJ%3A%3A2022%3A265%3AATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.265.01.0001.01.ENG&toc=OJ%3A%3A2022%3A265%3AATOC)

<sup>356</sup> These services are: online intermediation services such as app stores, online search engines, social networking services, certain messaging services, video sharing platform services, virtual assistants, web browsers, cloud computing services, operating systems, online marketplaces, and advertising services.

<sup>357</sup> Where it achieves an annual Union turnover equal to or above EUR 7.5 billion in each of the last three financial years, or where its average market capitalisation or its equivalent fair market value amounted to at least EUR 75 billion in the last financial year, and it provides the same core platform service in at least three Member States.

<sup>358</sup> Where it provides a core platform service that in the last financial year has at least 45 million monthly active end users established or located in the Union and at least 10 000 yearly active business users established in the Union.

<sup>359</sup> Where the gateway’s thresholds were met in each of the last three financial years.

<sup>360</sup> On 6 September 2023, the Commission designated six gatekeepers for 22 core platform services and opened four market investigations to further assess arguments trying to rebut the quantitative presumption as well as one qualitative market investigation, see [https://digital-markets-act.ec.europa.eu/commission-designates-six-gatekeepers-under-digital-markets-act-2023-09-06\\_en](https://digital-markets-act.ec.europa.eu/commission-designates-six-gatekeepers-under-digital-markets-act-2023-09-06_en)





met, the Commission may still 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.

Designated gatekeepers have to ensure compliance with the do's and don'ts of the DMA within six months after one or more of the core platform services they provide have been identified as fulfilling the thresholds of the Regulation. These do's and don'ts include obligations about data-related practices, neutrality provisions, provisions to encourage multi-homing and advertising-related practices. They are directly applicable to provide the speed and legal certainty needed in these markets. These obligations will help to open up possibilities for companies to contest markets and challenge gatekeepers based on the merits of their products and services, while giving them more space to innovate. The Commission can decide to engage in a regulatory dialogue to specify certain obligations, where necessary. Gatekeepers also have the obligation to provide information about acquisitions, which will be shared with national competition authorities and will considerably improve the ability to track acquisitions that may be problematic. Similarly, gatekeepers must provide an independent audited description of techniques for profiling consumers, which will be shared with the European Data Protection Board to inform about the compliance with EU data protection rules. To ensure that the DMA stays ahead of the curve and can remain future-proof in light of the dynamism of digital markets, the Commission can carry out a market investigation to determine whether other services or new practices need to be included.

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 that aims to improve the conditions of these digital markets, so that both business and end users of core platform services may benefit from increased innovation, improved quality of services and fairer terms of use. The DMA provides legal certainty upfront – about impermissible practices – hence aiming to prevent such practices from occurring in the first place. It complements competition law enforcement and does not prevent the effective application of *ex post* EU and national competition rules.

Under the DMA, the Commission will be able to impose penalties and fines of up to 10% of a company's worldwide turnover, and up to 20% in case of repeated infringements. In the case of systematic infringements, the Commission will also be able to impose behavioural or structural remedies necessary to ensure the effectiveness of the obligations, including a ban on further acquisitions or the divestiture of (parts of) a business.





On 10 May 2022, the Commission adopted a new Vertical Block Exemption Regulation accompanied by the new Vertical Guidelines which inter alia included clarifications as to the assessment of vertical agreements in the platform economy and of online sales restrictions.<sup>361</sup>

In June 2022 the Commission has also launched an evaluation of Regulation 1/2003, its antitrust procedural regulation, to ensure that it is fit for purpose as regards enforcement in the digital age.<sup>362</sup> The evaluation started with a call for evidence explaining the procedure to be followed as well as with a public consultation to gather the views on the functioning of the regulation.<sup>363</sup> The evaluation covers the Commission's procedural regulation in its entirety, while also focusing on the Commission's investigative and enforcement powers, the procedural rights of parties to investigations and of third parties and the Commission's cooperation with national competition authorities and courts.

In March 2023, the Commission has also announced the launch of an initiative aiming at adopting Guidelines on exclusionary abuses of dominance.<sup>364</sup> The Guidelines are aimed at taking stock of the state of the case law on exclusionary conduct and the Commission's enforcement practice based on such case law. The initiative started with a Call for Evidence seeking feedback on the adoption of such guidelines from stakeholders. At the same time, the Commission adopted an Amending Communication to its Guidance on Enforcement priorities to Article 102<sup>365</sup>, to bring it in line with our current enforcement practice, which has evolved in light of developments in the case law of the EU Courts and market dynamics.

Moreover, in 2020 the Commission announced its intention to reappraise its approach to referrals under Article 22 of the EUMR.<sup>366</sup> The Commission published specific guidance on

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<sup>361</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_2844](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2844)

<sup>362</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4194](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4194)

<sup>363</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation_en)

<sup>364</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_1911](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_1911)

<sup>365</sup> See [https://competition-policy.ec.europa.eu/antitrust/legislation/application-article-102-tfeu\\_en](https://competition-policy.ec.europa.eu/antitrust/legislation/application-article-102-tfeu_en)

<sup>366</sup> [https://ec.europa.eu/commission/presscorner/detail/fr/ip\\_21\\_1384](https://ec.europa.eu/commission/presscorner/detail/fr/ip_21_1384). In 2022, the General Court of the EU confirmed that “*in particular taking account of the literal, historical, contextual, and teleological interpretations of Article 22 [EUMR], it must be held that the Member States may [...] make a referral request under that provision irrespective of the scope of their national merger control rules*” (Judgment of 13.07.2022, Case T-227/21, Illumina v. Commission, paragraph 183).  
<https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-07/cp220123en.pdf>

its recalibrated approach in March 2021<sup>367</sup> and it provided further practical guidance on the assessment of Article 22 EUMR candidate case in a Q&A document which was published in December 2022.<sup>368</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 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

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<sup>367</sup> [https://ec.europa.eu/competition/consultations/2021\\_merger\\_control/guidance\\_article\\_22\\_referrals.pdf](https://ec.europa.eu/competition/consultations/2021_merger_control/guidance_article_22_referrals.pdf)

<sup>368</sup> [https://competition-policy.ec.europa.eu/system/files/2022-12/article22\\_recalibrated\\_approach\\_QandA.pdf](https://competition-policy.ec.europa.eu/system/files/2022-12/article22_recalibrated_approach_QandA.pdf)



this investigation, the Commission worked in close cooperation with the European Data Protection Board.

Moreover, under the High-Level Group established by Article 40 of the Digital Markets Act, the European Commission will keep in close contact with a number of sectorial bodies or groups of national bodies including not only the European Competition Network, but also the Body of the European Regulators for Electronic Communications, the European Data Protection Supervisor and European Data Protection Board, the Consumer Protection Cooperation Network, and the European Regulatory Group of Audiovisual Media Regulators.



## 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 continues to be a priority area for the ACCC for 2023-2024.<sup>369</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. In August 2022, the Australian Federal Court ordered Google LLC to pay \$60 million in penalties for making misleading representations to consumers about the collection and use of their personal location data on Android phones between January 2017 and December 2018, following court action by the ACCC.<sup>370</sup> Further, in July 2023, the Australian Federal Court ordered two of Meta's subsidiaries, Facebook Israel and Onavo Inc, to each pay \$10 million in penalties for engaging in conduct liable to mislead when promoting its Onavo Protect mobile app, following proceedings instituted by the ACCC.<sup>371</sup>

The ACCC is proactively monitoring and investigating allegations of potentially anticompetitive conduct that may substantially lessen competition in digital platform markets. The ACCC has publicly noted that this includes restrictions on third-party access,

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<sup>369</sup> ACCC, [Compliance & enforcement policy & priorities 2023-2024](#).

<sup>370</sup> ACCC, [Google LLC to pay \\$60 million for misleading representations](#), 12 August 2022

<sup>371</sup> ACCC, [\\$20m penalty for Meta companies for conduct liable to mislead consumers about use of their data](#), 26 July 2023.



pre-installation and defaults, self-preferencing in relation to app marketplaces and allegations in relation to the advertising technology supply chain.<sup>372</sup> Where appropriate the ACCC may take enforcement action.

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. As a result, the ACCC has recommended a new regulatory regime for digital platforms,<sup>373</sup> which is currently being considered by the Australian Government.

**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).**

From 2017-2019, the ACCC conducted an inquiry into the market power and the impact of search engines, social media and news aggregators on media, advertisers and consumers.<sup>374</sup> The ACCC published its final report for that inquiry in July 2019.<sup>375</sup> Subsequent to that, the Australian government accepted a recommendation in that report to establish a Digital Platforms Branch at the ACCC.

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 the Australian Government. Specifically, the Digital Platforms Branch is conducting the Digital Platforms Service Inquiry (2020-2025) under which it provides 6-monthly interim reports to the Australian Government.

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

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<sup>372</sup> ACCC, [Digital platforms services inquiry - Discussion Paper for September 2022 interim report](#), 18 February 2022, pp 60-61.

<sup>373</sup> ACCC, [Digital platform services inquiry, Interim report No. 5 – Regulatory reform](#), 2022.

<sup>374</sup> ACCC, [Digital platforms inquiry terms of reference](#), 4 December 2017.

<sup>375</sup> ACCC, [Digital platforms inquiry - final report](#), 26 July 2019.



advertising and the data practices of digital platform service providers and data brokers.<sup>376</sup> Published reports of this inquiry have focussed on:

- a. online private messaging services in Australia (September 2020)<sup>377</sup>;
- b. online app marketplaces (March 2021)<sup>378</sup>;
- c. the provision of web browsers and general search services and choice screens (September 2021)<sup>379</sup>;
- d. general online retail marketplaces (March 2022)<sup>380</sup>;
- e. the need for regulatory reform in Australia to address the competition and consumer concerns identified in digital platform services (September 2022)<sup>381</sup>;  
and
- f. social media services in Australia (March 2023)<sup>382</sup>.

The seventh report of this inquiry was submitted to the Australian Government in September 2023, and examines the expanding ecosystems of digital platform providers in Australia.<sup>383</sup> The eighth report of the inquiry will examine competition and consumer issues in the supply of data broker services in Australia and will be provided to the Australian Government by 31 March 2024.<sup>384</sup>

#### The ACCC's Strategic Data Analysis Unit (SDAU) and Data and Intelligence Branch

The ACCC's institutional capabilities are also strengthened by the SDAU, a specialist team offering expert analysis across the work of the ACCC, including competition and consumer issues in data markets. This unit comprises approximately 18 data professionals with skills in data analysis, data engineering and data science.

In 2021, the ACCC established a Data and Intelligence branch which combines the expertise of the SDAU with its Intelligence team, Legal Technology Services team and the Infocentre (a key source of data and intelligence that informs the agency's compliance

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<sup>376</sup> ACCC, [Digital platform services inquiry 2020-2025](#), 10 February 2020.

<sup>377</sup> ACCC, [Digital platform services inquiry – September 2020 interim report](#), 23 October 2020.

<sup>378</sup> ACCC, [Digital platform services inquiry – March 2021 interim report](#), 28 April 2021.

<sup>379</sup> ACCC, [Digital platform services inquiry – September 2021 interim report](#), 28 October 2021.

<sup>380</sup> ACCC, [Digital platform services inquiry – March 2022 interim report](#), 28 April 2022.

<sup>381</sup> ACCC, [Digital platform services inquiry - September 2022 interim report](#), 11 November 2022.

<sup>382</sup> ACCC, [Digital platform services inquiry - March 2023 interim report](#), 28 April 2023.

<sup>383</sup> ACCC, [Digital platform services inquiry - September 2023 interim report issues paper](#), 8 March 2023.

<sup>384</sup> ACCC, [ACCC invites views on data broker industry](#), 10 July 2023.



and enforcement work). Bringing together these teams of specialists is enabling the ACCC to combine their skills to build new tools and techniques to better understand 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.**

The ACCC's fifth report in its ongoing Digital Platforms Service Inquiry recommended a range of new measures to address harms from digital platforms to Australian consumers, small businesses and competition.<sup>385</sup> In addition to consumer and competition specific recommendations for digital platforms, the report also reiterates the ACCC's support for economy-wide reforms to consumer law such as a prohibition on unfair trading practices.

The Australian Government has concluded its consultation on these recommendations, and the ACCC is awaiting the Government's response.

Past reforms 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>386</sup> and the News Media Bargaining Code (designed to address the significant bargaining power imbalance between major digital platforms and Australian news businesses, providing a negotiation, mediation, and arbitration framework).

**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 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>387</sup> including with the Australian Media and Communications Authority (ACMA) and the Communications Department on an industry

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<sup>385</sup> ACCC, [Digital platform services inquiry, Interim report No. 5 – Regulatory reform](#), 2022.

<sup>386</sup> ACCC, [Consumer Data Right \(CDR\)](#), 9 May 2018.

<sup>387</sup> ACCC, [Digital platforms inquiry – final report](#) pages 30-38, June 2019.



code of practice to counter disinformation online and improve news quality<sup>388</sup> and working with other agencies on the design and implementation of the News Media Bargaining Code. The ACCC also cooperates with the Office of the Australian Information Commissioner (OAIC) to perform a monitoring function under the Consumer Data Right.<sup>389</sup>

More recently, we have recently moved to strengthen our engagement with other Australian regulators on digital platforms issues. In March 2022, the ACCC, together with the ACMA, OAIC, and Office of the eSafety Commissioner formed the Digital Platform Regulators Forum (DP-REG).<sup>390</sup>

The purpose of DP-REG is for Australian regulators to share information about, and collaborate on, cross-cutting issues and activities relating to the regulation of digital platforms. The forum seeks to increase cooperation and information sharing between digital platform regulators on broad areas of intersection, including new and novel regulatory approaches.

In June 2023, agency heads of the four DP-REG members met to review the forum's progress and to discuss DP-REG's strategic priorities for 2023-24, which include:

- understanding and assessing the benefits, risks and harms of generative AI and how the technology intersects with the regulatory remits of each DP-REG member
- assessing the impact of algorithms
- improving digital transparency, and
- increased collaboration and capacity building between the 4 members.<sup>391</sup>

Recent work undertaken by DP-REG includes a draft working paper examining algorithms, joint submissions to various Government processes, engaging with industry stakeholders, academic experts and international counterparts, and ongoing collaboration, information sharing and coordination on matters relating to digital platforms regulation.

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<sup>388</sup> DIGI, [Australian code of practice on disinformation and misinformation](#), 22 February 2021.

<sup>389</sup> ACCC, [Consumer Data Right \(CDR\)](#), 9 May 2018.

<sup>390</sup> See the ACCC's media release [here](#).

<sup>391</sup> ACCC, ACMA, OAIC and eSafety, [Communique – Digital Platform Regulators Forum puts generative AI on agenda](#), June 2023.





## 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*.

While in some cases final orders have been passed, other cases are at different stages of proceedings.

The Commission initiated an investigation against Google in April 2019 on allegations pertaining to abuse of dominant position in various markets with respect to the Android ecosystem. The Commission, after considering the investigation report and conducting an inquiry, passed its final order in the matter on 20.10.2022 wherein Google was found to be abusing its dominant position in multiple markets in the Android Mobile device ecosystem by way of certain agreements entered into with mobile manufacturers. The Commission noted that Google operates the Android OS as well as licences its other proprietary applications and the mobile manufacturers use this OS & Google’s apps in their smart mobile devices. Accordingly, they enter into multiple agreements to govern their rights and obligations viz. Mobile Application Distribution Agreement (“MADA”), Anti-fragmentation Agreement (“AFA”), Android Compatibility Commitment Agreement (“ACC”), Revenue Sharing Agreement (“RSA”), etc. It was found that MADA assured that the most prominent search entry points i.e., search app, widget and chrome browser are pre-installed and prominently placed on Android devices, which accorded significant competitive edge to Google’s search services over its competitors. AFA/ ACC guaranteed that distribution channels for competing search services is altogether eliminated by prohibiting OEMs from offering devices based on Android forks. Simultaneously, RSAs helped Google to secure exclusivity for its search services to the total exclusion of competitors. The combined results of these agreements guaranteed a continuous access to search queries of mobile users which helped not only in protecting the advertisement revenue but also to reap the network effects through continuous improvement of services, to the exclusion of competitors. The Commission issued a cease and desist order, imposed a monetary penalty of INR 1337.76/- Crores and directed Google to comply with certain remedial measures.

CCI also initiated an investigation against Google in November 2020 primarily in relation to its Play Store policies. The Commission, after considering the investigation report and conducting an inquiry, passed its final order in the matter on 25.10.2022 wherein Google was found to be abusing its dominant position with respect to its Play Store policies. It was found that Google's Play Store policies required App developers to exclusively and mandatorily use Google Play's Billing System (GPBS) for paid apps as well as in-app purchases i.e., purchases made by users of Apps after they have downloaded/ purchased the App from the Play Store. Further, app developers were restricted from providing users with a direct link to a webpage containing an alternative payment method or use language that encourages a user to purchase the digital item outside of the app (anti-steering provisions). If the app developers do not comply with Google's policy of using GPBS, they are not permitted to list their apps on the Play Store and thus, would lose out the vast pool of potential customers in the form of Android users. The Commission issued a cease and desist order, imposed a monetary penalty of INR 936.44 crores and directed Google to comply with certain remedial measures.

CCI initiated an investigation against MakeMyTrip and Golbibo (collectively referred to as MMT-Go) in October 2019 on allegations that it is abusing its dominant position by imposing certain restrictions on its hotel partners and has entered into an anti-competitive arrangement with Oravel Stays Limited (OYO) under which MMT-Go delisted the competitors of OYO from its online portals. Upon consideration of investigation report and conducting an in-depth inquiry, the Commission passed its final order on 19.10.2022 finding MMT-Go to be inter alia imposing wide parity clauses (including price parity and room availability parity) and exclusivity conditions on its hotel partners along with employing deep discounts which created an ecosystem that impacted competition in the market for online intermediation services for booking of hotels in India, besides affecting hotels. In addition, it was also found that the arrangement between MMT-Go and OYO had adversely affected competition in the market by denying access to an important channel of distribution through foreclosure. A monetary penalty of INR 223.48/- crores and 168.88 /- crores on MMT-Go and OYO respectively was imposed by the Commission. In addition, certain broad behavioral remedies were also directed to be carried out by MMT-Go.

The Commission directed an investigation in 2020 against online e-commerce platforms viz. Amazon and Flipkart based on an information 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 in respect of online sale of mobile phones. The factual matrix before the Commission showed that the exclusive launches, coupled with the issue of preferential sellers and deep discounting, was creating an ecosystem which can potentially lead to anti-competitive outcomes.



Further, taking note of various media reports, CCI, in January 2021, took *suo motu* cognizance of the privacy policy update and terms of service by WhatsApp and directed an investigation. It was *inter alia* also reported that the new policy makes it mandatory for the users to accept the terms and conditions in order to retain their WhatsApp account information and provides as to how it will share personalised user information with Facebook and its other subsidiaries. The Commission further noted that the conduct of WhatsApp in sharing of users' personalised data with Facebook, in a manner that is neither fully transparent nor based on voluntary and specific user consent, appears *prima facie* unfair to users. Further, such conduct apparently amounts to degradation of non-price parameters of competition *viz.* quality which result in objective detriment to consumers, without any acceptable justification. Besides, CCI also noted that the impugned data sharing provision by WhatsApp with Facebook may have exclusionary effects also in the display advertising market which has the potential to undermine the competitive process and create further barriers to market entry besides leveraging.

In December 2021, CCI directed an investigation against Apple in relation to the alleged mandatory use of Apple's proprietary in-app purchase system (IAP) for distribution of paid digital content by app developers especially when it charges a commission of up to 30% for app and in-app purchases, discriminatory application of its App Store guidelines, access to data collected from users of Apple's downstream competitors which would enable it to improve its own services, etc.

Further, in January 2022, the CCI directed another investigation against Google in relation to alleged unilateral and non-transparent determination and sharing of online advertisement revenues with news publishers. It was also alleged that Google has unilaterally decided not to pay the publishers for the snippets used by Google in search engine results. In this regard, the Commission in its order directing investigation *inter alia* observed that it needs to be examined whether the use of snippets by Google is a result of bargaining power imbalance between Google on the one hand and news publishers on the other, and whether it affects the referral traffic to news publisher websites, and thus, their monetization abilities.

In April 2022, the CCI directed an investigation against two food ordering and delivery platforms, namely Zomato and Swiggy, for their alleged vertical arrangements which has affected their working as neutral platforms. Both Swiggy and Zomato were found to be operating as major intermediary platforms in the food delivery space, underscoring their market power and ability to adversely as well as appreciably affect the level playing field. Besides, the allegation regarding price parity imposition has also been directed to be investigated.

On the non-enforcement 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 also conducted a survey-based market study to understand market trends, distribution methods and strategies in e-commerce space. The aim of the study was to understand business practices and contractual provisions in e-commerce 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 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, the Commission has set up a Digital Markets and Data Unit (DMDU) which would serve as an interdisciplinary centre of expertise for digital markets to address the emerging complexities in the digital world. The DMDU will inter-alia connect with experts; engage with industry; academia, international agencies and provide policy inputs for competition issues in 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 01.10.2018 to review the existing Competition law framework and make recommendations to further strengthen the framework to meet new 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.

With a view to further facilitate compliance, provide greater certainty, reduce litigation and bring about faster market correction, the Competition (Amendment) Bill, 2023 was passed by the Parliament in April 2023. These amendments, inter alia, include 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 kind of agreements in addition to the introduction of settlement and commitment mechanisms.

The Government of India is also in the process of introducing a number of regulatory reforms to address issues in the digital space. The Government has constituted a Committee on Digital Competition Law, which is examining the need for ex-ante regulatory mechanism for 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.**

Being an overarching market regulator, CCI has a 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. The Competition Act 2002 also provides a consultative mechanism between CCI and other statutory authorities. 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.



## 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.**

Recent 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 (conduct), merger regulation (M&A), cartel investigations (Cartel), market inquiries (MI) and advocacy.

Conduct 1: Whatsapp/Govchat

In respect of unilateral conduct enforcement, the CCSA has referred the case against WhatsApp/Facebook (now Meta Platforms Inc) in November 2021. The CCSA 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. GovChat is a start-up that has developed and integrated government communications to provide online real-time escalation and reporting services, creating a platform which allows government and citizens to connect and engage, with a view to improving service delivery and active citizenry.

WhatsApp threatened to off-board GovChat from its platform for failure to comply with the unduly restrictive terms and conditions. The CCSA alleged that WhatsApp's conduct is felt not only by GovChat and its customers and/or similar firms like GovChat, but also by ordinary citizens who utilise WhatsApp to engage with government services. The removal of GovChat from the WhatsApp platform will negatively impact the proper functioning of the South African government communication to its citizens, public service delivery queries, as well as the health and well-being of the citizens of South Africa who utilise the WhatsApp platform as a primary means of interacting with government services. A hearing for the merits of the case is yet to be confirmed.

Conduct 2: Uber-Bolt/E-hailing Partners Council

The CCSA has also received a complaint against Uber and Bolt in relation to their e-hailing services. In this complaint, which was filed in February 2023, the E-Hailing Partners

Council<sup>392</sup> alleges that Uber and Bolt abuse their dominance in the provision of e-hailing services in South Africa by charging excessively high commission fees to driver-partners that utilize their apps to connect with passengers. The E-Hailing Partners Council also alleges that the two firms engage in predatory pricing when they set fares paid by passenger using e-hailing services. Previously, the CCSA investigated predatory pricing allegations against Uber and decided not to pursue the case as the complaint was lodged with the CCSA within one year of Uber commencing operations in South Africa. Given the short duration, the CCSA was of the view that it was unlikely to establish ant-competitive effects. Investigations into the new complaint are ongoing.

#### MI 1: Online Intermediation Platforms Market Inquiry (OIPMI)

With regards to market inquiries, the CCSA launched an Online Intermediation Platforms Market Inquiry (OIPMI) in May 2021, focused on digital platforms in areas of e-Commerce marketplaces, online classifieds, software application stores, travel and accommodation aggregators, and food delivery services platforms. The inquiry has 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. The Inquiry released its provisional report in July 2022 and final report on 31 July 2023.

#### MI 2: Media and Digital Platforms Market Inquiry (“MDPMI”)

On 17 March 2023, the Competition Commission (Commission) has published the draft Terms of Reference (ToRs) for a market inquiry into the distribution of media content on digital platforms, the Media and Digital Platforms Market Inquiry (“MDPMI”).<sup>393</sup> The Commission has invited members of the public and interested stakeholders to make written submissions on the proposed ToRs.

The MDPMI has been established in terms of section 43B(1)(a) of the Competition Act No. 89 of 1998 (as amended) and is based on the Commission’s view that there may exist market features in digital platforms that distribute news media content that impede, distort, or restrict competition and which may have adverse implications for the news

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<sup>392</sup> E-Hailing Partners Council is an association that represents the interests of e-hailing drivers in South Africa.

<sup>393</sup> The draft ToRs for the MDPMI is available on the Commission’s website at <https://www.compcom.co.za/wp-content/uploads/2023/03/Media-and-Digital-Platforms-Market-Inquiry-DraftTerms-of-Reference-17-March-2023.docx>.





media sector of South Africa. This imbalance can have implications on fair payment for content and the sustainability of independent journalism.

#### M&A 1: Google/Fitbit merger

This was a merger between Google LLC (USA (Google) and Fitbit Inc. (USA) (Fitbit). Google is active in a wide range of areas, including online search, online advertising, other online services such as YouTube, Google Maps and Gmail as well as cloud computing services. In addition, Google maintains and develops the Android ecosystem which includes an open-source mobile Operating System (OS) and a suite of mobile apps and services. The main products and services relevant to this transaction are Wear OS, Google Fit, The Play Store, Google Search and Google Ads.

Fitbit develops, manufactures and distributes wrist-worn wearable devices as well as smart scales, software and services, designed to give its users tools to help them reach their health and fitness goals. The main products available in South Africa are fitness trackers, smartwatches and the Fitbit mobile app.

The Commission was concerned that as a direct result of the proposed merger, Google will be able to exclude Fitbit's competitors in the market for wrist worn wearable devices. The Commission approved the transaction subject to several remedies which were proposed by Google. The conditions are for a period of 10 years and are in line with what is offered in order jurisdictions. The conditions will be monitored by an independent Trustee who will have the necessary skills, competencies, and technical abilities.

#### M&A 2: MIH eCommerce and WeBuyCars

The merger was between MIH eCommerce Holdings (Pty) Ltd (MIH eCommerce) and WeBuyCars (Pty) Ltd (WeBuyCars). MIH eCommerce is mainly an investment holding company and does not itself supply any products or services in South Africa. MIH eCommerce has investments in OLX and the Naspers' subsidiary, Car Trader, which operates as AutoTrader. Although the Commission found that the proposed transaction does not present any horizontal overlap in South Africa as the Naspers Group is not active in the buying and selling of cars, it, however, found that there was an intention by Naspers Group to enter the market through another transaction in competition with WeBuyCars.

This is because Naspers Group had acquired a stake in Frontier Car Group Inc (FCG) and through this acquisition, the Naspers Group intended to enter the South African market for wholesale and online buying of cars from the public and selling to dealers in direct competition with WeBuyCars. Naspers Group, through FCG has been anticipating entering the South African market for the wholesale and online buying of used cars in competition



with WeBuyCars. The Commission prohibited the transaction and Tribunal upheld the decision to prohibit.

#### M&A 3: Shoprite/ODD transaction

Shoprite Checkers (Pty) Ltd (“Shoprite”) acquired control in Main Street 1883 (Pty) Ltd (“Target Firm”). Shoprite retails and distributes a wide range of fast-moving consumer goods (“FMCGs”), through its various stores and supermarkets located across South Africa. Of relevance to the merger assessment was Shoprite’s Checkers Sixty60 (“Sixty60”) activities. Sixty60 is the Shoprite’s online store platform, which enables customers to order groceries from Checkers stores by downloading the Sixty60 application onto their smartphone. Sixty60 is available across South Africa and customers can order a minimum value of R100 worth of groceries and up to 35 items, which will be delivered to the customer within 60 minutes or less.

The Target Firm provides on-demand delivery (“ODD”) services (i.e., last mile logistic services) to online shopping platforms such as Shoprite’s Sixty60 platform and other merchants such as KFC, Checkers and EvolutionVape. The Commission assessed a vertical overlap as Shoprite operates an online shopping platform, and the Target Firm provides ODD services. ODD services are an input for retailers or merchants’ online shopping platforms. Shoprite solely procured ODD services for its Sixty60 platform from the Target Firm pre-merger. However, the Commission found that transaction did not raise any foreclosure concerns. The Commission approved the transaction without conditions.

#### M&A 4: Anchorage Merger Sub Inc. (“Anchorage”)/ Activision Blizzard, Inc. (“Activision”)

The primary acquiring firm is Anchorage, a company registered in accordance with the General Corporation Law of the State of Delaware. Anchorage is a wholly owned subsidiary of Microsoft. In South Africa, Microsoft controls Microsoft (S.A.) Proprietary Limited (“Microsoft South Africa”) and Microsoft 1968 South Africa Proprietary Limited (“Microsoft 1968”). The Acquiring Group, through Microsoft, is a global technology company active in the provision of several IT-related services. Relevant to the proposed transaction are its gaming activities, which involve the development, publishing, and distribution of games for PCs, consoles, and mobile devices through Xbox Game Studios. Microsoft also publishes games that are developed by other game developers. Microsoft offers Xbox gaming consoles and the Surface series of personal computers.

The primary target firm is Activision, a company registered in accordance with the General Corporation Law of the State of Delaware. Globally, Activision develops games for PCs, consoles, and mobile devices and publishes them in most countries around the world. Activision does not own any console (such as PlayStation or Xbox) but its games can be



played on both of these consoles. One of the popular games developed and published by Activision is Call of Duty.

The primary competition concern in this transaction arose from the (vertical) concern that Microsoft may, post-merger, restrict the distribution of Call of Duty to the Microsoft console, Xbox, or make Call of Duty available on terms that exclude or undermine the ability of other console manufacturers to compete. The Commission found that the proposed transaction is unlikely to result in significant foreclosure concerns as the parties do not have the ability and incentive to foreclose competing game distributors, particularly Sony (Playstation) and Nintendo (Switch). Furthermore, the merging parties have made undertakings to continue supplying Call of Duty games to other console manufacturers. The Commission has recommended that the Competition Tribunal (Tribunal) approve the proposed transaction whereby Anchorage intends to acquire Activision, without conditions.

M&A 5: Travelstart Online Travel Operations (Pty) Ltd (Travelstart) / Club Travel SA (Pty) Ltd (Club Travel SA) and Flightsite (Pty) Ltd (Flightsite)

Travelstart is an online travel agency (OTA) that provides customers with an online booking platform for travel. Travelstart's focus is on the leisure travel market, allowing end customers to compare prices across suppliers for local and international flights, accommodation and car hire and make reservations directly through its website.

The primary target firms are Club Travel SA and Flightsite. Club Travel controls Travellinck. Club Travel SA is a travel agency operating across South Africa. Club Travel SA mainly provides corporate travel services through Club Corporate. However, it also offers leisure travel services to a very limited extent although these services are not offered online and therefore are not comparable to the service offerings of OTAs such as Travelstart.

The Commission found that there is a horizontal overlap in the activities of the merging parties in relation to the sale of online leisure travel services. Specifically, the horizontal overlap arises in the sale of online flight tickets for leisure travel. In addition, the merging parties' activities overlap horizontally for the sale of tour packages offline. The Commission found that the proposed transaction is unlikely to result in a substantial lessening of competition and therefore approved the proposed transaction unconditionally.

Cartel 1: Babybug and Medmart

Medmart and BabyBug entered into an agreement and/or concerted practice to fix prices and divide markets by allocating suppliers in contravention of sections 4(1)(b)(i) and (ii) of the Act.



Babybug and Medmart agreed to manipulate their respective prices in such a manner that they would be able to make profit selling 3PLYL2 disposable face masks and 3PLYL3 disposable face masks (“3-ply face masks”) on the Takealot platform. They would achieve this by allocating to each other days on which each would adjust their respective prices and stock availability accordingly, in order to limit competition between themselves. They also agreed that they alternate on the days each would price higher than the other on the Takealot platform. The investigation team has referred the case to the Tribunal and the parties are also engaging with the Commission for a consent agreement.

### Advocacy interventions

The CCSA has continued its work with the [Intergovernmental Fintech Working Group](#) (“IFWG”), which includes financial services regulators as well as the information regulator. The IFWG has produced several position papers. These include [Regulating Open Finance Consultation and Research Paper](#), [FinTech platform activity in South Africa and its regulatory implications](#); and [the position paper on crypto assets](#). These papers seek to understand the growing role of FinTech’s and innovation in the South African financial sector and explore how regulators can more proactively assess emerging risks and opportunities in the market.

On 04 November 2020 the Commission issued a Strategy Report entitled “Competition in the Digital Economy,” which provides a review of the emerging competition issues in e-commerce, consumer empowerment and provides guidance to businesses on the Commission’s approach to enforce its mandate in digital markets.

The Competition Commission hosted stakeholders from the public and private sector in a seminar on Fourth Industrial Revolution (4IR) on 24 June 2019. The seminar was conducted by way of two panel discussions, which included representatives from Microsoft SA, Rain, RecoMed, Bolt SA (formerly Taxify SA), the Technology Innovation Agency (TIA), the Independent Communications Authority of South Africa (ICASA), the Council for Scientific and Industrial Research (CSIR), the Centre for Competition Regulation and Economic Development (CCRED), the Competition Tribunal and Falcon & Hume Inc (law firm). The purpose of the seminar was to discuss what digital markets, digitisation and new technologies mean for the South African economy.

On 17 July 2020 the Commission hosted external stakeholders in a webinar on the “Buyer Power Enforcement Guidelines: How does it affect doing business?” One hundred and forty-two (142) attendees from small business, big business, government departments, other government agencies, the legal fraternity, research organisations, entrepreneurs, media, the Commission and Competition Tribunal employees participated. The purpose of



the seminar was to (a) inform market participants in the designated sectors of online services, food and agro-processing and grocery retail, especially the smaller businesses, of the new buyer power provisions; and (b) simplify the message in a practical way on how the Guidelines apply to them.

On 19 August 2021, the Commission held a workshop with the Information Regulator of South Africa (IRSA). The purpose of the engagement was to discuss issues related to data regulation in the country and in particular, the concurrent jurisdiction shared by the two regulators on these issues.

The Commission provided a paper titled “Competition in the Digital Economy” as input to the Masterplan. The paper aims to inform government and corporate stakeholders of its approach to regulating competition in the digital economy and to facilitate coordinated regulatory and advocacy efforts in this area.

In 2021 the Commission provided a policy response related to the Draft National Policy on Data and Cloud (the Policy), more specifically to the chapter titled ‘Policy Issues in Competition’. The policy seeks to establish a High-Performance Computing and Data Processing Centre (HPCDPC) for public data processing and storage and provide cloud services to state entities. The objective is to create a single integrated data processing centre to store data that state entities can use.

On 27 August 2019 the Commission provided input to the BRICS Digital Market Report to the Administrative Council for Economic Defense (CADE), Brazil’s competition authority. The purpose of the Report was to outline international approaches to the regulation of digital markets.

**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 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 had initiated a project to use digital tools in the detection and investigation of collusion and assist generally on digital market cases. The CCSA has partnered with academic institutions to bring in their artificial intelligence expertise rather than seeking to hire and build internal capacity. Following engagements with National Treasury and provincial treasuries to understand the extent and format of tender information, the Commission has begun a process of designing the algorithmic programmes. This has been greatly aided by engagements with agencies globally to discuss their experience as to what has worked and what has not.

Similarly, for data specialists the CCSA has not sought to hire in those skills yet but rather to put together a panel of local experts that may be drawn on in enforcement or research. This approach was adopted as the best means to establish what the use case is for such skills, what specific skills are most valuable and the frequency of data specialist requirements. It is only if there is an ongoing demand in investigation across different enforcement areas and the ability to sustainably source the right skillsets that the CCSA will invest in hiring. The panel approach is also a means to interest data scientists in competition law enforcement and potentially establish career paths in this area.

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 29th – 31st 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.

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).

In February 2022, heads of the competition authorities of Egypt, Kenya, Mauritius, Nigeria and South Africa (the “Authorities”) upon the conclusion of the digital markets workshop held in Johannesburg, South Africa, reflected the need to convene a digital markets dialogue to initiate the development of an African competition law enforcement and policy response to digital markets. The joint statement of the authorities proposed the research and scoping aspects of the African Digital Markets Initiative to be operationalised by each participating authority’s technical teams. These technical teams will work collaboratively towards an agreed work programme.

The CCSA and Competition Commission of Singapore (CCS) have signed an MOU, through which CCS has agreed to provide algorithms / codes to CCSA team that is working on the project, ‘Cartel Detection in Public Tenders’.

**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.

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 OIPMI Provisional Report sets out numerous proposed remedial actions for specific platforms to implement based on the provisional findings. The Inquiry is also of the view that Commission Guidelines can complement the section 78 regulations through providing guidance on best practice by online intermediation platforms such that they remain compliant with the Act. Guidelines are useful in providing business certainty as to the enforcement approach of the Commission, and best practice guidance gives even greater certainty as it informs business that specific business practices will be considered to be in compliance with the Act.

**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.

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. 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.**

### Enforcement

The Korea Fair Trade Commission (hereinafter the “KFTC”) is closely monitoring the abuse of dominance and interference with business activities by competitors in digital industries and the platform sector and is strictly enforcing laws against antitrust violations. In the second half of 2022, the KFTC launched an investigation into Apple for excessively charging App Store fees solely to Korean developers compared to overseas app developers. As a result, Apple voluntarily submitted remedies to revise unfair terms in eight countries, including Korea. In early 2023, the KFTC conducted an investigation and imposed remedies on Google for blocking mobile game makers from releasing mobile games on a rival platform and requiring them to exclusively release their titles on Google Play. In addition, the KFTC sanctioned Kakao Mobility, a leading platform company in Korea, for assigning calls more favorably to its franchise taxis by manipulating its algorithms. The KFTC is currently investigating tying by domestic and overseas platforms, selfpreferencing by manipulating search algorithms, and interference with business activities by competitors. Furthermore, the KFTC is striving to prevent consumer harm in the online platform sector by imposing remedies on five domestic and overseas OTAs to remove MFN clauses in 2021 and sanctioning two OTAs for misleading consumers in 2022.

### Non-Enforcement

In addition to handling individual cases, the KFTC is laying the institutional foundation to swiftly respond to anti-competitive conduct and infringement of consumer interests in online platform markets. As part of its efforts, the KFTC completed regulatory inspections of major cloud service providers and stakeholders in 2022. In addition to handling individual cases, the KFTC is laying the institutional foundation to swiftly respond to anti-competitive conduct and infringement of consumer interests in online platform markets. As part of its efforts, the KFTC completed regulatory inspections of major cloud service providers and stakeholders in 2022. According to the inspections, a handful of global Big Tech companies dominate the Korean cloud services market, and based on the inspection results, the KFTC will seek ways to increase competitive pressure in the cloud services market. In addition, the KFTC conducted regulatory inspections of ten domestic and overseas OTT service providers in 2023. The domestic OTT market size has been growing since COVID-19, significantly affecting related industries, including content and broadcasting. Accordingly, the competitive environment is constantly changing with mergers and acquisitions. The KFTC will



examine the market structure, competitive environment, transaction practices, and anti-competitive factors through regulatory inspections and review the need to make institutional improvements. In terms of competition advocacy, the KFTC conducted a market analysis on the IoT in 2022 and is having close discussions with relevant agencies after creating plans for regulatory improvements to facilitate competition. This year, the KFTC will conduct a market analysis on the bio health sector to promote innovative growth in new industries.

Moreover, the KFTC is carrying out self-regulation schemes led by the private sector to address disputes and conflicts between market participants, such as platforms, online stores, and consumers. Self-regulation allows market participants in the private sector to discuss ways to improve unfair trade practices arising from power imbalances between platforms and online stores and address new types of consumer harm caused by online platforms while the government provides legislative backing. In August 2022, the KFTC formed and launched an “Online Platform Self-regulatory Body” and established self-regulatory measures through discussions between the government and market participants, such as platform operators, online stores, and consumers. Specifically, the KFTC announced self-regulatory measures for delivery platforms and open markets in March and May 2023, respectively, and will take a step-by-step approach to promote self-regulation in other sectors.

**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 KFTC established an “Online Platform Policy Division” in December 2022 to systematically and swiftly respond to online platform policy issues. The Online Platform Policy Division supports the private sector’s discussions on self-regulation to address gap-eul issues and is responsible for shaping policy to resolve market monopoly issues and promote competition.

The KFTC is building big data analysis systems to collect and use fair trade data scientifically in line with the trends of the digital era. We expect to enhance the efficiency of internal casehandling work by integrating the KFTC’s case-handling data, relevant agencies’ conflict resolution data, and civil complaints data.

In addition, the KFTC improved the organization, staffing, and equipment to strengthen capabilities for investigating digital evidence and has a digital forensic center at Director for General Investigation. Digital forensic experts conduct on-site investigations and train



KFTC employees, contributing to enhancing digital evidence acquisition and analysis 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 are any significant proposed reforms pending before national legislative or regulatory bodies to better address digital competition issues.**

The KFTC is implementing different policies for gap-eul issues between platforms and online stores and monopoly issues in platform markets to effectively respond to each problem. In the case of gap-eul issues, the KFTC is carrying out self-regulation schemes to promote win-win cooperation through close discussions since they need to be addressed by mediating the interests of different parties and improving transaction practices. By contrast, the KFTC is taking stern action against monopoly issues as they can severely restrict overall market competition. To this end, the KFTC established the “Online Platform Monopoly Review Guidelines” in January 2023 to enforce the “Monopoly Regulation and Fair Trade Act (hereinafter the “MRFTA”)” more closely against monopolistic behavior of platforms. Based on the accumulated law enforcement cases regarding online platforms, the Guidelines specify criteria to review the abuse of monopoly power prescribed under the MRFTA. In particular, the Guidelines describe that online platforms are characterized by cross-network effects, economies of scale, and data and explain how to reflect these characteristics when defining markets and assessing dominance. In addition, the Guidelines define restricting multi-homing, imposing MFN clauses, and engaging in self-preferencing and tying as major types of conduct that raise competitive concerns and present applicable provisions of the MRFTA and factors to consider when determining the illegality of each conduct. In January 2023, the KFTC formed a task force\* to improve anti-monopoly regulation of platforms. The task force focuses on reviewing whether the MRFTA can effectively respond to platform monopoly issues or whether there is room for improvement.

\* The task force consists of 17 external experts, including professors and lawyers (Vice Chairperson Su-hyun Yoon of the KFTC and Professor Hwang Lee of Korea University serve as cocommissioners)

**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.**

There is a growing need for interagency collaboration and coordination as agencies have more platform-related work with the transition to the digital economy. So along with the



KFTC, relevant agencies, including the Ministry of Economy and Finance, Ministry of Science and ICT, Ministry of Employment and Labor, Ministry of SMEs and Startups, Korea Communications Commission, and Personal Information Protection Commission, formed and launched the “Pan-governmental Platform Policy Council (vice-minister level)” in July 2022. Through the Council, the KFTC is closely discussing platform issues with other agencies and minimizing overlapping work to increase synergies between policies. Based on the discussions in the Council, the Online Platform Selfregulatory Body was launched and the government and market participants, including digital platforms, online stores, and consumers, create self-regulatory measures through close discussions. The Body announced self-regulatory measures for delivery platforms and open markets in March and May 2023, respectively, and will take a step-by-step approach to promote self-regulation in other sectors.

\* (Delivery platform) ▲ Improve contract practices between delivery platforms and business users, ▲ improve a dispute resolution process between delivery platforms and business users, ▲ create plans to promote win-win cooperation between delivery platforms and business users and reduce the burden of business users

(Open market), ▲ Improve transaction practices between open markets and online stores, ▲ improve a dispute resolution process between open markets and online stores, ▲ create plans to promote win-win cooperation with online stores and reduce the burden of online stores