EUROPEAN COMMISSION

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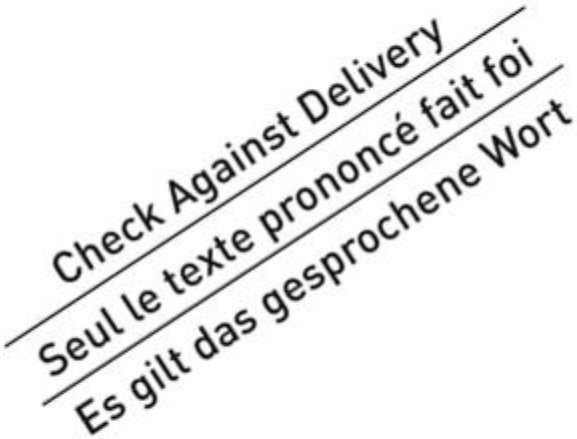
Remarks at panel discussion "Antitrust and digital platforms around the world"



Speech at the Global Antitrust Institute
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Competition

Ladies and Gentlemen:

Thank you for inviting me. It is a pleasure to comment on the European Union view on antitrust action in digital and technology markets. And it is a privilege to exchange notes with fellow enforcers from all over the world. Let me set the spotlight on online platforms in our economies chosen by you against the broader background of EU antitrust rules.

The European Commission's antitrust enforcement is based on provisions in the founding Treaty of the European Community of 1957, prohibiting anticompetitive agreements and concerted practices as well as unilateral abuses by undertakings in a dominant position. These provisions – today numbered as Articles 101 and 102 of the Treaty on the Functioning of the European Union – have stayed the same in substance (if not in denomination) over more than six decades. They do not have a history as long as the Canadian and US fundamental provisions, like the Sherman Act. But they have proven very effective in addressing practices that harm consumers. Either indirectly by reducing or eliminating competition or else directly by exploiting them.

In recent years, antitrust all over the world has faced new challenges coming from the combination of globalization and the digitisation of our economies. The internet has disrupted established business models and delivered innovative solutions. In many aspects, these have improved the lives of consumers. But contrary to initial hopes and expectations, the internet has not proven to be a problem-free zone. It allowed and enabled a very quick creation of entrenched market positions, calling into question the original promise of perennial openness and contestability. Multi-sided platforms harness the power of the crowd, often for the greater benefit of their users. But the network effects on which they rely for their growth and monetization also can give birth to ever more unassailable competitive strongholds, due to scale, scope and lock-in effects.

It is not surprising, therefore, that the Commission's enforcement activities have had to focus in recent years on the digital sphere. It is also natural that much of the enforcement activity has been based on the legal basis prohibiting unilateral conducts, i.e. Art. 102 TFEU. But the Commission also uses other elements of its legal panoply. Prohibiting restrictive agreements and controlling mergers between firms also play a role in ensuring that markets remain contestable and that the best players, and not necessarily just the largest ones, can thrive.

Enforcing competition rules in a specific sector presents specific challenges. Digital markets are no exception. Assessing direct or indirect network effects, multi-sided markets and their association with economies of scale and scope as well as zero-price marketing and consumers that are at times multi-homing, but also at times locked in, requires careful analysis of the available evidence and the weighing of all relevant factors. In addition, anticompetitive behaviour may take different forms. An easy way out was the call on competition authorities to refrain from intervening in these markets "because competition is always just a click away". However, our careful assessment of evidence pointed clearly to situations in which stifling of the competition process, and thereby consumer harm, appeared.

The cases the Commission has pursued in recent years show that the analytical tools available are apt to deal with the above-mentioned types of issues that may emerge in a new environment, but in fact are phenomena that have been discussed in the economics literature for a long time. The cases also deal with different practices in different markets. This shows the capability of the antitrust tools more generally to address a variety of business practices. Finally, the cases show that the Commission looks carefully, both on a case-by-case and systemic basis, at the substantial bodies of evidence that we collect. Notably, the effects of the conduct on the market are carefully assessed, even if for some types of conduct, such as exclusivity, there may be certain legal presumptions which apply.

The Commission's Google cases have been among the most-discussed of all antitrust enforcement actions in recent years. The first two of these, *Google Shopping* and *Android* (2017 and 2018), dealt with self-preferencing practices intended to leverage dominance from one market to another. This is a well-established concept in EU antitrust enforcement.

In the recent *AdSense Decision (2019)*, which deals with the provision of search ads on third-party websites, the Commission looked at hundreds of contracts and the impact that their terms had in the market. Through an exclusivity provision, the most commercially important customers were contractually prevented from sourcing any search ads from Google's rivals on any of their websites. Over time, Google replaced this with another clause. It did not completely stop customers from sourcing ads from Google's rivals. But it required that they had to take a minimum number of search ads from Google, and put them on the most visible – and most profitable – part of the page. Finally, customers also had to get written approval from Google before changing the way they displayed the search ads of Google's rivals – right down to the size, colour and even font of those ads.

These arrangements covered a significant part of the market – on average over half of it. The evidence showed that customers had an interest to source from rivals, at least in part, but that Google's practices either prevented or strongly deterred them from doing so. We saw that search advertising is a market with strong network effects. This means that, to compete effectively, one needs to build scale. Google thus prevented rivals from being able to compete on the merits in what was a strategic entry point.
A common element among these cases is the existence of predominantly smaller, specialized companies or start-ups in the adjacent market that the dominant company is trying to overtake. This common thread is also present in other cases. For example, in 2017, the Commission accepted commitments from Amazon not to introduce or enforce what are sometimes called "most-favoured-nation" clauses in the e-books market. These clauses required publishers to offer Amazon similar (or better) terms and conditions as those offered to its competitors and/or inform Amazon about more favourable or alternative terms given to Amazon's competitors.

The Commission considered that such clauses could make it more difficult for other e-books platforms to compete with Amazon by reducing publishers' and competitors' ability and incentives to develop new e-books and distribution services. Amazon proposed a set of commitments to remove these concerns, and the Commission made these commitments binding by decision just under two years from the opening of the formal investigation. Two years since, we have public information indicating that certain smaller Amazon competitors have been able to expand in this sector.
Commissioner Margrethe Vestager has made it transparent that by now, the Commission, following its e-commerce sector inquiry, is also looking into Amazon's behaviour in relation to Amazon Marketplace. This is an example of a dual-role platform which, on the same website, offers marketplace services to third party sellers and sells products as an online retailer, in direct competition with those third party sellers. The Commission is analysing whether Amazon might thereby gain access to competitively sensitive information about competitors' products which it could use to boost its own activities at the expense of third party sellers. This assessment is still at an early stage. No conclusions have been drawn so far. It just shows how important issues surrounding access to and the use of data may concern competition authorities in the years to come.
Digital and data issues will occupy competition enforcers not only in the sphere of antitrust, but also in that of merger control. Recently, the Commission has dealt with a number of cases in which a central part of the analysis was whether the merged entity would be able to accumulate large amounts of big data inaccessible to competitors, and thereby gain a competitive advantage.

In this line of cases, which included *Microsoft/LinkedIn*, *Apple/Shazam*, *Facebook/WhatsApp and Verizon/Yahoo!*, the Commission has thoroughly looked at all relevant potential concerns raised by data accumulation (as well as other factors) and concluded that in the case at hand, no lasting competition concerns would arise. Where the Commission did identify initial concerns, for example in relation to potential foreclosure of rival professional social networks competing with LinkedIn via Microsoft's strong position in operating systems and productivity software, the Commission accepted remedies tailored to remove these concerns.

While these recent cases and others tackle important elements of the digital economy, the challenges of the increasing digitisation of the economy are of course broader and may require further reflection on their implications for competition enforcement. Commissioner Vestager's special advisers work, with its ideas on how to deal with platforms, data and artificial intelligence in the years to come, is just one element of the broader effort through which the Commission intends to ensure that its insights are up-to-date. This reflection is engaged in intensive dialogue with all stakeholders. It comes against an intensified international dialogue. On this basis, evidence-based policy choices on future priorities and future enforcement action in relation to market developments such as the increasing vertical integration of market players across the supply chain will have to be made. Discussions such as the one we have today are helpful in this respect. So once again, thanks for having me.