EUROPEAN COMMISSION

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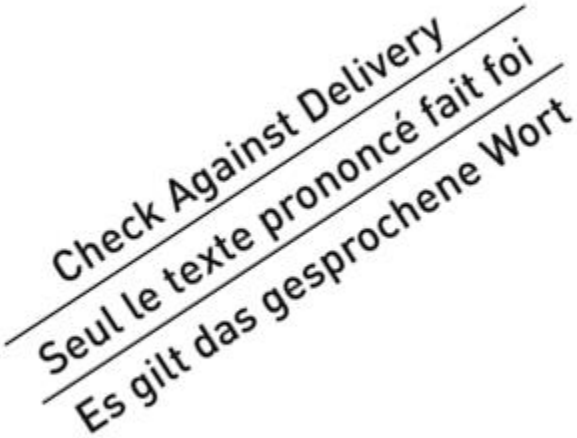
A digital legacy



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Competition

1 Introduction

Ladies and gentlemen,

It's a pleasure to be with you here today. Many thanks for this opportunity to discuss a highly topical programme. It seems a happy coincidence to be discussing digital technologies here in Georgetown, so close to the Volta Laboratory set by Alexandre Graham Bell.

He is mostly known as the inventor of the telephone but he was also a deaf educator. His career choice was deeply marked by his family history: his father also taught elocution to deaf people and both his mother and wife suffered from this disability. His research on hearing and speech would led him to experiment with hearing devices, and that's how he would eventually come to invent the first telephone.

More than a century later, Graham Bell may be amazed at how his invention has developed. Hardly could he have imagined that the telephone, originally created to transmit human voice, would transmit all kinds of data, thanks to digital technologies. To the point that today it is an essential device in our daily lives, helping us find our way on the city map, pay our bills or take our holiday pictures.

Perhaps, what would make him particularly happy is the way digital technologies have helped improve the life of people with hearing loss, like his mum. This was precisely the aim of the Volta Laboratory in Georgetown.

Graham Bell's story shows the life-changing potential of technology. There is no doubt that digitalisation has brought many benefits to our societies. But, as any other technology, it has also come with new risks.

2 Global reflection on digitalisation

In recent years, the world has become increasingly aware of these new dangers, not only to our markets but also to our democracies and our personal lives. This has put forward the need to set the right rules, in order to ensure that digitalisation serves the values we cherish, values like freedom and fairness.

From a competition point of view, the digital revolution has given rise to a few huge companies that now are omnipresent in the digital economy. Therefore, it is only logical that competition enforcers and other regulators are investing significant resources to understand the features of the data economy, as well as the new threats to effective competition and innovation.

As you know, a new European Commission will start its mandate in November, after the

EU elections in May. So, for us in Brussels, now it is a good moment to take stoke of the work done during the last five years, and to draw lessons that can guide us in the years to come. I should add that, when looking back to what we have done, I cannot prejudge on anything that we will do, at the wake of entry into office of a new Commission.

Under the strong leadership of Commissioner Vestager, DG Competition has carried out significant work in the digital field. The Commissioner launched a reflection process to see how to keep our rules updated, in order to face the new digital challenges. This process involved a public consultation, an international conference in Brussels, and the appointment of three Special Advisers. These advisers - an economist, an internet expert and a lawyer - published a report in April.

This report adds food-for-thought to other contributions coming from experts and competition authorities all around the world, from the UK to Japan and Australia, as well as to the ongoing reflection here in the US. It is encouraging to see that we all tend to identify similar challenges, from the market power of certain platforms to the role of data. A proof of this trend towards convergence is the Common Understanding that the competition authorities of the G7 countries recently approved.

In their report, the Special Advisers to Commissioner Vestager clearly stated that competition policy and law will continue to have a crucial role in the digital age, promoting innovation for the benefit of consumers.

3 Enforcement legacy

From the enforcement side, our work shows that EU competition law has been able to deal with new complex digital issues. Our decisions are always based on solid evidence and respectful of the rule of law. We apply the rules exactly in the same way to any company, regardless of its size or country of origin. Everyone is welcome to do business in Europe, and everyone should play by the same rules when doing so.

During the current mandate, the Commission conducted a **sector inquiry** into e-commerce. This helped us understand how digital technologies can be used to restrict price competition. We found, for example, that manufacturers widely use software to monitor the prices of their online retailers. And often, online retailers use algorithms too, to automatically adjust their prices to those of its competitors.

We investigated some of the concerns raised by this inquiry in several cases, which concluded in fines to EU and Asian manufacturers of consumer electronics; precisely, for imposing minimum resale prices to their online retailers, in breach of EU rules.

Our investigations into **Google** have also helped us understand how powerful digital business can harm competition. For example, through **self-preferencing**, a recurring concern regarding big tech platforms.

Google's search engine dominates the market for web searches in all EU countries. We found, in our Google Shopping decision, that Google had abused this position to give an unfair advantaged to its own shopping comparison service. In other words, the company was acting as both player and referee, to its own advantage.

By doing that, the company stifled competition on merits in the comparison shopping markets, ultimately harming consumers. Our decision ordered Google to give equal treatment to rival services in its results. We are now looking into Google's job search business to see whether the same thing may have happened.

Our investigation into Google **Android** shows how platforms can use new ways to extend their dominance to new markets. Some 80% of the world's smartphones and tablets use Google's operating system. We found that Google was forcing phonemakers that wanted to pre-install the Play Store on their devices to pre-install Google Search and Chrome too.

And more recently, in the **AdSense** case, we found that Google had abused its dominance as broker of online search ads. The company imposed a number of anti-competitive restrictions on third-party websites. First, it prevented them from sourcing any ads from rivals on their websites. Over time, it removed this exclusivity provision, but still required to take a minimum number of search ads from Google, and to display them on the most visible spots. In this way, Google prevented rivals from competing on their merits in a strategic entry point.

In these cases, we are looking into the remedies proposed by the company to restore competition. We must keep in mind that the important thing is not to protect a specific competitor, but to ensure an environment where healthy competition can take place.

Because often in digital cases, we see there are smaller specialized companies or start-ups in adjacent markets that the dominant company is trying to monopolize. So our aim is to make sure that such companies can innovate and grow for the benefit of consumers. We need to preserve the opportunity for smaller rivals to break into the market by offering something different.

This is why we must keep monitoring the so-called "Most-Favoured-Nation clauses", as they can be used by big platforms to stop sellers from selling cheaper elsewhere, or from offering new products.

Such was the focus of our investigation into **Amazon**'s distribution agreements for **e-books**, which required publishers to offer Amazon similar or better terms to those offered to its competitors. These clauses covered not only price, but also other aspects like innovative e-books or alternative distribution models. In 2017, we accepted the company's commitments removing such clauses for EU consumers, thus opening the way for publishers to develop new services and to increase consumers' choice.

Currently, we are conducting a new investigation into Amazon, this time in relation to its **Marketplace**. Here, we deal with an example of a platform with a dual-role: it offers a marketplace to other sellers and, at the same time, it sells its own products as a retailer. So, what we are looking at is whether Amazon might gain access to sensitive data about the products of its competitors, an information that could help the company to boost its own products.

We only opened the formal investigation in July, and therefore it is still too early to know if the company may be breaking the rules or not.

However, what this case clearly shows is that issues related to access to, and use of data will probably keep us busy in the coming years. The value of data is already something that we've assessed in recent mergers, from Google's acquisition of DoubleClick to the more recent merger of Apple and Shazam. Big platforms like Amazon, Google or Facebook collect large amounts of data from consumers and their business customers. **Data** that can be vital to give them an advantage which smaller rivals cannot match, thus potentially undermining competition.

Therefore, one thing we may need to do, to open up competition, is to ensure that data needed to compete are available. Our special advisers have put forward some ideas on how this access could work; because, of course, it would need to be in line with data protection rules, and it would need to maintain the incentive to invest in data collection.

4 Enforcement and regulation

I've just mentioned data protection, which is a good reminder that some of the issues raised by digital technology concern not only competition, but also many other fields. For example, privacy or consumer protection. Competition law and other legal regimes must therefore be complementary, as competition enforcement cannot solve all issues.

In fact, many competition cases have served as blueprints for regulation. A competition case might highlight the need for regulation, if thorough and solid investigation shows issues that may be recurrent, and might require non-case specific solutions. This is what happened in the telecom sector, to name but one, but also, more recently, in the field of geo-blocking.

In recent years, the European Commission has taken important regulatory initiatives, such as the regulations on **General Data Protection** and on **Platform-to-business** trading practices.

Complementarity between antitrust enforcement and regulation is important to ensure a level-playing field for all companies.

The EU is also pushing for a global solution on the **taxation** of digital companies, in order to make sure that they pay their fair share of tax, just as any brick-and-mortar business.

Tax issues have also been one of our priorities during this mandate on State aid control. We've had some prominent **tax cases** where we found several EU governments have given an illegal tax advantage to certain companies. With due deference to the upcoming rulings of the Court of Justice on those cases, our guiding principle has been that any company that does business in the EU must pay its share, like any other competitor. But, as mentioned before, the issue of digital taxation goes beyond the limits of competition enforcement.

5 Conclusion

Before I finish, let me return to Alexandre Graham Bell to give you one of his famous quotes. He said the inventor "*looks upon the world and is not contented with things as they are. He wants to improve whatever he sees*".

In the same way, we must look into the digital economy and try to improve things for businesses and consumers, where we see that markets are not working in a fair way.

Our past work in digital markets has shown us that, due to their specific characteristics, the risk of under-enforcement can be just as harmful to innovation and competition as the risk of over-enforcement. It was too naïve to believe that competition is always 'a click away'. We've learnt that there is a need to intervene to address situations where competition is restricted, to the harm of consumers. If we act too late, whatever we do will remain without relevance for the market.

On the basis of solid evidence and sound legal and economic principles, authorities must be able to take action before the damage to competition is irreparable. And, as pointed by our special advisers, we have in Europe the basic frameworks in place to make the adjustments that may be needed, in order to meet the upcoming digital challenges.

I look forward to continuing the debate on all these issues during the day. Thanks for your attention.