

**Opening speech delivered by Olivier Guersent, Director General of DG
Competition at**

the VI Lisbon Conference, 8th November 2023

Thank you for the kind invitation to address this conference.

It's a shame I couldn't travel to Portugal – especially as you are celebrating the 20th anniversary of the Portuguese Competition Authority!

But I am glad that digital tools allow me to still be part of this event.

Indeed, the digital transformation has improved our lives in many ways.

We communicate more easily, shop more conveniently, and enjoy new digital entertainment services.

However, large online platforms also pose new challenges, and in the last years there has been a consensus on the need for action to address these challenges.

This consensus is the reason why the process leading to the adoption of the Digital Markets Act, including the negotiations with the co-legislators, went so smoothly.

In early September, we designated six gatekeepers for 22 core platform services.

This is a key milestone that sets the date for the start of the enforcement phase, which is 7 March 2024.

By that day, the designated gatekeepers will need to comply with the Digital Markets Act.

Considering these developments, one could wonder about the future of antitrust enforcement in digital markets.

Let me be clear on this: the Digital Markets Act and antitrust enforcement complement each other and will coexist, as they address different issues.

Indeed, we will continue to enforce Article 102 in relation to practices of gatekeepers that are not covered by the Digital Markets Act, and in relation to dominant companies that either do not qualify as gatekeepers or do not provide core platform services.

And of course, antitrust enforcement has inspired and will keep inspiring digital regulation.

Therefore, I expect that some of the antitrust concerns in the digital sectors will be addressed by the Digital Markets Act.

This will allow us to dedicate more resources to pursuing cases in other sectors of the economy.

Although the Digital Markets Act is one of the first digital regulations in the world, we are happy to see that other jurisdictions are taking steps in this direction.

Given the globalised nature of the digital economy, different regulatory and enforcement regimes will inevitably interact with each other and therefore effective coordination is crucial.

And of course, coordination will not be limited to digital regulation.

As the Digital Markets Act and antitrust enforcement will coexist, we will need to coordinate closely with antitrust enforcers in the EU.

Indeed, while the Commission is the sole enforcer of the Digital Markets Act, National Competition Authorities can conduct market investigations and apply national rules, to the extent their scope does not overlap with the Digital Markets Act in terms of regulated companies and obligations.

Therefore, coordination within the European Competition Network will be pivotal to avoid divergent outcomes and a duplication of efforts.

In this regard, I would like to mention that two colleagues from the Dutch National Competition Authority have joined us for a period of six months, as part of a Joint Digital Markets Act Investigative Team.

DG Competition will be happy to extend this initiative to other National Competition Authorities.

In view of our longstanding tradition of effective cooperation within the European Competition Network, I am confident that we will work together well also for the Digital Markets Act.

This is especially important, as the challenges of digital markets are not getting any easier.

Artificial Intelligence, or “AI”, will probably transform much of our work and private lives.

AI is likely to bring many benefits and create new opportunities.

However, it may also raise challenges related to biases, fairness, privacy, security, accountability and transparency.

This is why already in 2021, the Commission proposed a new package to boost investment in AI and regulate it.

The proposal to regulate AI, which we call the “AI Act”, is currently under negotiations.

Its aim is to ensure that people can trust that AI is safe and compliant with fundamental rights.

Now, AI may also raise competition concerns.

First, AI may facilitate collusion between algorithms or make it more difficult for competition authorities to detect them.

This is why DG Competition is increasing its capacity to detect antitrust infringements.

Second, the AI sector itself may raise competition concerns.

Based on our experience in digital markets, anti-competitive strategies and a “winner-takes-all” outcome cannot be excluded.

This is because AI systems rely on vast amounts of computing power and data.

Companies that have access to cloud services’ facilities and vast amounts of data – or to unique data sets – may be incentivized to favour their own AI systems.

In turn, these AI systems, once deployed on smartphones or virtual assistants, may be used to favour the other services that these companies provide.

A lack of competition in the AI sector may exacerbate the societal challenges that AI raises.

The Commission has an important role to play in ensuring that AI remains innovation-intensive, and that consumers and businesses have a broad choice of AI systems.

This is why we are monitoring the development of the AI sector.

We stand ready to address competition concerns through:

antitrust, if these competition concerns materialize;

merger control, if companies engage in “killer acquisitions”;

and the Digital Markets Act, where we have the possibility to add new core platform services like AI systems, if warranted.

As you can see, work on digital markets makes up a lot of our waking hours!

At the same time, our policy work covers many different workstreams – and I would like to conclude this address by talking about the initiative aiming at adopting Guidelines on exclusionary abuses of dominance.

In response to our Call for Evidence – published on 27 March – we received 48 submissions.

The respondents generally welcome the initiative and see it as an opportunity to systematize the case law and bring more clarity to the enforcement of Article 102, while maintaining the “effects-based” approach.

Indeed, our aim is to do precisely that.

We want to enhance legal certainty and give clear guidance to businesses, while at the same time clarifying that the ultimate purpose of Article 102 is the protection of consumer welfare.

We very much hope that this will benefit all stakeholders, including National Competition Authorities and national courts.

The main purpose of the Guidelines is to clarify how the effects-based approach – by now well-established – applies.

So, when thinking of the post-Guidelines world, I would expect to see a fair degree of continuity in our current approach to Article 102 enforcement.

We will continue to run cases based on effects, and we will rely on the insights and assistance of economic analysis, if appropriate.

Economics definitively plays a role in our competition law assessment and can assist in the identification of sound theories of harm.

That said, economic analysis is only a part of an overall assessment of all the relevant facts and circumstances.

It also needs to remain within the boundaries of a “workable” standard and not be treated as a scientific proof of the existence or absence of anticompetitive effects.

We plan to publish a draft of the Guidelines by mid-2024.

In the meantime, we will continue our consultations with stakeholders.

In particular, our exchanges within the European Competition Network have already provided valuable input.

With the wide experience collected on the enforcement of Article 102 and equivalent national provisions by the enforcers in the Member States, we believe this dialogue will enrich the text of the Guidelines.

This concludes my address: I would just like to wish you all an interesting conference, where you will also hear from other senior officials from DG Competition later today and tomorrow.

And once again, many happy returns for the Autoridade da Concorrência!

CHECK AGAINST DELIVERY