

Memo

To: The European Commission, DG Competition,
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From: The Danish Chamber of Commerce

Public consultation on the implications of digitalization on competition policy

The Commission has published an open call for contributions to its ongoing reflection process about competition policy in the era of digitalization.

General remarks

The Danish Chamber of Commerce (Dansk Erhverv) welcomes the Commission's initiative to reflect on the implications of digitalization in competition policy. We fully share the sentiment that competition policy and practices should be reconsidered and reevaluated in light of the various developments unleashed by digitalization and new technology.

This initiative coincides with similar efforts by national competition authorities in relation to issues arising in the new digital economy. We have already seen divergence for example in the various stances taken towards online booking platforms with regards to the use of price parity clauses. A common understanding and a common framework about how to conduct effective competition policy in the digital era would help ensure the conformity and integrity of both the digital single market and the single market as such.

One of the prevailing concerns that the reflection process should address is the concentration of very substantial market power in the hands of a small number of companies in the digital economy, and the potential abuse of market dominance that this might lead to, a problem that seems to be aggravated by certain inbuilt "winner-takes-all" dynamics and the rapid speed and scalability characteristic of many digital markets and digital business models. The Danish Chamber of Commerce shares the opinion that effective competition policy, with a sound and up-to-date understanding of the implications and dynamics of new digital markets and business models, is highly important to safeguarding the vitality and health of the European economies.

However, it should be recalled that the apparent dominance of a few predominantly American digital companies also in part reflects the relative weakness of the European digital sectors that struggle to match their competitors abroad, when it comes to attracting top talent and investments, and generally operate within the context of high tax countries where capital and digital markets are not

fully integrated. Reforms that strengthen the underlying competitiveness of European businesses may therefore also help mitigate the tendency towards concentration of market power by encouraging innovation and helping foster more competition.

Specific remarks

One well-known concern with regards to the impact of digitalization and rise of digital economy business models is the definition of markets and market share. For instance, when services are offered at no economic cost, as in the case of some multisided platforms, the traditional framework may become ineffective as a tool to understanding the actual market dynamics and to ensure effective merger control. Another concern pertains to the access to and use of personal data, as data increasingly forms the basis of dominant market positions because it can be leveraged to strengthen and entrench a market position, inter alia by ensuring that services offered and advertisements sold to third parties better match consumer preferences. In order to effectively deal with these and other issues as they arise, competition authorities need to update their understanding and modus operandi, in particular by moving towards a greater understanding of new digital business models and their role in a wider digital “ecosystem”.

Regulators need to understand and pay attention to the ramifications that various regulation within the digital economy may have for competition policy. For example, many digital companies have established their business models around gaining access to and using the users’ personal data, so any legislation governing data usage will also affect competition. The EU Commission has taken steps to foster more competition in the field by introducing the right to portability of personal data in the General Data Protection Regulation, although what effects it will have in practice remains to be seen. Similarly, while the proposed ePrivacy Regulation seeks to update, clarify and expand upon the established European data protection regime, it may as an unintended consequence lead to an increase in market concentration¹ and hence affect competition in the market. The interplay between regulating the still evolving digital economy and competition policy must be understood and carefully taken into account by regulators and legislators. In particular, attention must be paid to establishing balanced rules and regulation in the digital economy that can help ensure a fair and even “playing field” between different types of companies, and to avoiding regulatory frameworks that would unduly result in excessive market concentration that might stifle European competitiveness.

The development of new technology poses new challenges with regards to competition policy. One example is how to tackle price setting done through machine-learning algorithms, since companies may not know exactly on what grounds the algorithm has deduced the pricing behaviour that it sets out, so that the outcome might inadvertently be identical to what would have arisen if market actors had decided to collude, tacitly or directly. Competition authorities may need to update their understanding of how certain types of anticompetitive behavior should be conceptualized, as well as what kinds of workable approaches and modus operandi could be employed to identify anticompetitive behavior in practice.

¹ See for instance Hildebrandt, C. & Arnold, R. (2017) Economic Impact of the ePrivacy Regulation on Online Advertising and Ad-based Digital Business Models, WIK (Wissenschaftliche Institut für Infrastruktur und Kommunikationsdienste), report commissioned by the German Federal Ministry for Business and Energy: https://www.wik.org/fileadmin/Studien/2017/WIK_ePrivacy_study_ENGLISH.PDF

Online platforms have become another important case in point. From the side of the user they are essentially free to use; the real price, of course, being access to personal data. These platforms often have strong inbuilt network effects, which means that they frequently display strong dynamics towards market concentration. Moreover, as mentioned in the Commission's call for contribution, online platforms can sometimes leverage their market power onto other markets, and there are concerns that platforms might in some situation be able to exploit their position in manners that could hamper competition or impose unfair terms and conditions on users. While recalling that there are historical instances of digital companies that at one point in time appeared to have strongly entrenched market positions, but were later very rapidly overturned by competitors, we agree that it is important that these concerns and possible remedies be further explored as part of the Commission's reflection process. We also stress that the Commission has launched several initiatives to update the regulatory framework governing online platforms, such as the proposed regulation promoting fairness and transparency for business users, and it is important to ensure consistency between them while taking all relevant issues that arise from the point of view of competition policy into account.

The Danish Chamber of Commerce welcomes the Commission's initiative to scrutinize and follow these and other developments closely and will of course be available for further consultations as the need may arise.

Best wishes

A handwritten signature in blue ink, reading "Malthe Munkøe".

Malthe Munkøe
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