



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

12 October 2022

## Contributing authorities



Competition Bureau  
Canada

Bureau de la concurrence  
Canada



Fair Trade Commission



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## I. Overview

1. In 2021, the 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.
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, and legislative and regulatory reforms and proposals. Looking across jurisdictions

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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. See here: [2022 G7 Summit under the German Presidency](#).

<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](#).

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, 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, 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 the role of algorithms. 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.

## 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.
13. Under the German G7 Presidency, this work was continued in the “Digital and Tech Working Group”. In May 2022, the G7 digital ministers met and discussed the future of digitalisation and more favourable legal and regulatory environments for the development and application of new digital technologies.<sup>5</sup> In their ministerial declaration, they recognise the need for effective competition policy instruments in view of dynamic developments in digital technologies and markets and state that new or updated regulatory and competition frameworks that address competition concerns raised by online platforms may be required to complement or adjust the existing competition policy instruments.<sup>6</sup>
14. The Bundeskartellamt and the German Ministry for Economic Affairs and Climate Action are hosting a G7 Joint Competition Enforcers & Policy Makers Summit on 12 October 2022. Its goal is to facilitate an exchange on enforcement and policy approaches related to competition in digital markets and related topics. The participants will be discussing the state of legal reforms around the globe, digital enforcement, and the intersection between competition law and other fields of law and policy.
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

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<sup>5</sup> <https://www.g7germany.de/g7-en/current-information/g7-meetings-digital-ministers-2014854>

<sup>6</sup> The Ministerial Declaration can be found [here](#).

then identifies commonalities and coherence in these approaches. The intention is 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 of the 2021 edition 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>7</sup>
20. The joint work under the 2021 UK G7 Presidency and the 2022 German 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 2022 Compendium 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>7</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.
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>8</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>9</sup> Network effects may affect competition in a variety of ways. They may

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<sup>8</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>9</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 operating system

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>10</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** and the ability to use that data to develop innovative applications, products, and services. 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.
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

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more highly as more developers sell applications for it; similarly, advertisers may value a search engine more highly as more consumers use it.

<sup>10</sup> The ability to raise and maintain prices is used as a shorthand for the various ways in which market power can be exercised.

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**. 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 are increasingly investigating harms or potential harms in a range of markets, 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.
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 2022, the Autorité de la concurrence (“the French competition authority” or “the Autorité”) accepted commitments from Meta with the aim of addressing competition concerns in the French market for non-search related online advertising.<sup>11</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>12</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>13</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 investigate the merits of the case.<sup>14</sup> In June 2022, the Bundeskartellamt 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>15</sup>

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<sup>11</sup> See the Autorité’s [Decision 22-D-12 of 16 June 2022](#) regarding practices implemented in the online advertising sector.

<sup>12</sup> See the Autorité’s [Decision 21-D-11 of 7 June, 2021](#) regarding practices implemented in the online advertising sector.

<sup>13</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 it €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](#).

<sup>14</sup> See Autorité’s [Decision 21-D-07 of 17 March, 2021](#)

<sup>15</sup> The press release can be found [here](#).

- 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>16</sup> The European Commission is also investigating whether certain advertising practices by Google<sup>17</sup> and Meta<sup>18</sup> were in breach of the abuse of dominance rules. In another proceeding it is investigating whether an agreement between these two companies as regards online display advertising (known as “Jedi Blue”) can be considered anticompetitive.<sup>19</sup>
- 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 conduct including for example, exclusionary agreements requiring Google as the default search engine and agreements prohibiting preinstallation of competitors’ search engines.<sup>20</sup>
- e. In early 2021, the UK’s 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>21</sup> The CMA is also investigating whether Meta abuses its dominant position in the social media or advertising markets<sup>22</sup> and whether Google might have abused a dominant position through its conduct in ad tech.<sup>23</sup> The CMA is also investigating the “Jedi Blue” agreement between Meta and Google.<sup>24</sup>

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<sup>16</sup> The European Commission 2019 decision on Google’s practices in online advertising can be found [here](#).

<sup>17</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3143](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3143)

<sup>18</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2848](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2848)

<sup>19</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1703](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1703)

<sup>20</sup> The US DOJ’s 2020 decision on Google’s practices search advertising can be found [here](#).

<sup>21</sup> [Investigation into Google’s ‘Privacy Sandbox’ browser changes - GOV.UK \(www.gov.uk\)](#)

<sup>22</sup> [CMA investigates Facebook’s use of ad data - GOV.UK \(www.gov.uk\)](#)

<sup>23</sup> [Investigation into suspected anti-competitive conduct by Google in ad tech - GOV.UK \(www.gov.uk\)](#)

<sup>24</sup> [Investigation into suspected anti-competitive agreement between Google and Meta and behaviour by Google in relation to header bidding - GOV.UK \(www.gov.uk\)](#)

- 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>25</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:
  - a. In 2021, the Japan Fair Trade Commission (“Japanese competition authority” or “JFTC”) published a report on digital advertising<sup>26</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 is scheduled to go into full operation in the autumn of 2022 with the additional designation of “specified digital platform providers” which are subject to specific regulations.
  - b. In 2019, the UK competition authority 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>27</sup>
  - c. The Australian Competition and Consumer Commission (“Australian competition authority” or “ACCC”) recently completed an inquiry that focuses on the competitiveness and efficiency of the advertising technology supply chain. The inquiry was published on 28 September, 2021.<sup>28</sup>
  - d. The German Bundeskartellamt (“German competition authority” or BKartA) published a report for public discussion in the context of its sector inquiry into non-search online advertising in 2022. It established 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>29</sup>
  - e. The French competition authority conducted a sector-specific inquiry on data usage in the online advertising sector.<sup>30</sup>
  - f. In 2021, the 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

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<sup>25</sup> The CBC’s news release can be found [here](#)

<sup>26</sup> The JFTC’s final report can be found [here](#).

<sup>27</sup> The CMA’s final report can be found [here](#).

<sup>28</sup> The ACCC’s Digital Advertising Services Inquiry can be found [here](#).

<sup>29</sup> The Bundeskartellamt’s publication can be found [here](#).

<sup>30</sup> The sector inquiry regarding data usage in the online advertising sector can be found [here](#)



more data about their customers than many consumers may expect, including access to all of their Internet traffic and real-time location data.<sup>31</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 few consumer IoT players that are already present in the digital advertising market.<sup>32</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 German competition authority 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>33</sup> In an ongoing proceeding, the Bundeskartellamt is assessing Google's data processing terms, in particular the question whether Google gives users sufficient choice as to whether, how, and for what purpose data are processed across services.<sup>34</sup>
  - b. 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 development of common algorithms to define fraud risk indicators that insurance companies may use in their activities. The final commitments ensure fair and non-

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<sup>31</sup> The FTC's final report can be found [here](#).

<sup>32</sup> The final report of the sector inquiry on IoT can be found [here](#).

<sup>33</sup> The case summary can be found [here](#).

<sup>34</sup> The press release can be found [here](#).

discriminatory access to the databases for non-ANIA members and prevent the sharing of sensitive data and information.

- c. 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>35</sup> In its ongoing investigations against Amazon (see below), the European Commission is also evaluating commitments by Amazon to refrain from using non-public data relating to, or derived from, the activities of independent sellers on its marketplace for its retail business that competes with those sellers.<sup>36</sup>
  - d. 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>37</sup>
  - e. In July, 2022, the AGCM opened an investigation against Google for refusing interoperability in sharing data on its platform with a company which has developed innovative data-based services allowing consumers to monetise their personal data.
  - f. 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>38</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 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 and fair trading (used in a fair trading case involving the travel platform 'Trivago');

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<sup>35</sup> The press release can be found [here](#).

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

<sup>37</sup> [Investigation into Google's 'Privacy Sandbox' browser changes - GOV.UK \(www.gov.uk\)](#)

<sup>38</sup> Bundeskartellamt, [press release](#) of 24 May 2022.

- 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>39</sup> which was preceded by a joint conceptual study by these two authorities in 2016 into data and its implications for competition law<sup>40</sup>, and the UK CMA's report on algorithms in 2021.<sup>41</sup> the CMA also contributed to the UK Digital Regulation Cooperation Forum's<sup>42</sup> papers that explored the benefits and harms of algorithms<sup>43</sup> and the role of regulators in auditing algorithms<sup>44</sup>;
  - c. Convening study groups like the Autorità Garante del la Concorrenza e del Mercato ("Italian competition authority" or "AGCM") and the Japanese competition authority; 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.
- 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>45</sup>
  - b. The UK 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>46</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.

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<sup>39</sup> The joint report is published [here](#).

<sup>40</sup> The joint report is published [here](#)

<sup>41</sup> The CMA's report can be found [here](#).

<sup>42</sup> [The Digital Regulation Cooperation Forum - GOV.UK \(www.gov.uk\)](#).

<sup>43</sup> [The benefits and harms of algorithms: a shared perspective from the four digital regulators \(publishing.service.gov.uk\)](#).

<sup>44</sup> [Auditing algorithms: the existing landscape, role of regulators and future outlook \(publishing.service.gov.uk\)](#).

<sup>45</sup> The press release can be found [here](#).

<sup>46</sup> Further detail can be found on the CMA's case page [here](#).

## 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 Italian competition authority 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>47</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>48</sup>
  - b. The European Commission has two ongoing investigations against the Amazon Marketplace. The first relates to the use non-public business data of third party sellers by Amazon's own retail business. The second 'Buy Box' investigation addresses concerns around the preferential treatment of Amazon's retail business and sellers using Amazon's logistics services, in the selection 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 is currently assessing comments provided during the market-testing of the commitments, which ran until 9 September 2022.<sup>49</sup>
  - c. The UK CMA recently opened an investigation into Amazon over concerns that practices affecting sellers on its UK Marketplace may be anti-competitive.<sup>50</sup>
  - d. The Japanese competition authority 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>51</sup> It also investigated Rakuten's conduct regarding the operation of its online retail platform "Rakuten Ichiba". It

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<sup>47</sup> See Case no A528 press release of 9 December 2021, <https://en.agcm.it/en/media/press-releases/2021/12/A528>

<sup>48</sup> See Case n. I842, press release of 17 December 2021, <https://en.agcm.it/en/media/press-releases/2021/12/I842>

<sup>49</sup> The press release can be found [here](#).

<sup>50</sup> [Investigation into Amazon's Marketplace - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-amazon-s-marketplace).

<sup>51</sup> The press release relating to the approval of the commitment plan can be found [here](#).

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>52</sup>

- e. The Canadian competition authority has an ongoing civil investigation into Amazon’s potential restrictive trade practices.<sup>53</sup>
  - f. In Germany, action from the German competition authority led to Amazon amending its terms of business for sellers on marketplaces worldwide after the agency deemed them to be abusive.<sup>54</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>55</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>56</sup>
  - h. 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. The European Commission holds the preliminary view that Apple’s rules for music streaming app developers, in particular as regards the so-called anti-steering provisions that limit their ability to steer iOS/iPadOS users (“iOS users” ) to or inform them about potential alternative (and often cheaper) subscription possibilities outside of the app, violate EU competition laws.<sup>57</sup>

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<sup>52</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>53</sup> The CBC sought information from market participants in August 2020, see [here](#)

<sup>54</sup> The case summary is published [here](#)

<sup>55</sup> The press release can be found [here](#).

<sup>56</sup> The settlement is published [here](#)

<sup>57</sup> The Commission’s investigation is summarised [here](#)

- 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. The CMA is currently consulting on a market investigation reference.<sup>58</sup> Following on from the study, the CMA has launched a competition law investigation into Google’s rules governing app access to listings on its Play Store.<sup>59</sup> The CMA has a separate competition law investigation underway in relation to Apple’s App Store terms and conditions, which opened in March 2021.<sup>60</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>61</sup>
- d. The Australian competition authority states that it is proactively monitoring and investigating allegations of potentially anticompetitive conduct, including self-preferencing in relation to app stores.<sup>62</sup>
- e. The Japanese competition authority 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>63</sup> Apple took these measures globally in March 2022. In addition, the JFTC started a fact-finding survey on mobile OS and mobile app distribution in October 2021.<sup>64</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.

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<sup>58</sup> [Mobile ecosystems market study - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/mobile-ecosystems-market-study).

<sup>59</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>60</sup> [Investigation into Apple AppStore - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/investigation-into-apple-appstore).

<sup>61</sup> The press release can be found [here](#).

<sup>62</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>63</sup> Press release relating to closing the investigation against Apple can be found [here](#).

<sup>64</sup> The JFTC conducted the questionnaire survey for app developers in March 2022.

- g. A recent Executive Order in the US has asked the US DOJ, the US FTC, and the Department of Commerce to study and report on mobile app ecosystems.<sup>65</sup>

## 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 Edgewell/Harrys,<sup>66</sup> among others. In addition, the US DOJ challenged Visa/Plaid based on these concerns.<sup>67</sup> In September 2022, the CMA referred Microsoft/Activision Blizzard for an in-depth Phase 2 investigation after finding in its Phase 1 investigation that the merger could lead to competition concerns.<sup>68</sup> The US FTC challenged Meta's proposed acquisition of Within Unlimited, alleging that trying to buy Supernatural, a popular virtual reality fitness app, instead of independently entering this market eliminates the prospect of increased consumer choice and future innovation.<sup>69</sup>
- 47. Another common theme is mergers involving data aggregation that risks entrenching market power. The European Commission reviewed and required interoperability

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<sup>65</sup> The Executive Order, published in 2021, can be found [here](#).

<sup>66</sup> The summaries can be found on the US FTC's web page: [Nielsen/Arbitron](#), [CDK/AutoMate](#), and [Edgewell/Harrys](#).

<sup>67</sup> The summaries can be found on the US DOJ's web page: [Visa/Plaid](#) and [Bazaarvoice/Power Reviews](#).

<sup>68</sup> [Microsoft / Activision deal could lead to competition concerns - GOV.UK \(www.gov.uk\)](#)

<sup>69</sup> The FTC's press release can be found [here](#).

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>70</sup> and the US FTC challenged Verisk/Eagleview on a similar theory.<sup>71</sup> The Japanese competition authority also reviewed Google/Fitbit, clearing it based on the parties' commitment to behavioural remedies that maintain interoperability and data separation.<sup>72</sup> The European Commission cleared the Meta/Kustomer merger only subject to conditions that guarantee non-discriminatory access to its publicly available APIs.<sup>73</sup> The Bundeskartellamt also reviewed and cleared the merger taking into account these commitments.<sup>74</sup> After a detailed Phase 1 investigation, the CMA cleared the merger.<sup>75</sup> The US FTC also successfully amended its complaint against Meta in a lawsuit that, 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>76</sup> the US FTC challenged CoStar/RentPath.<sup>77</sup> The UK CMA recently reviewed Norton/Avast<sup>78</sup>, which concerned antivirus and privacy software and Microsoft/Nuance<sup>79</sup>, which concerned voice recognition and transcription software.

## 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.

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<sup>70</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>71</sup> The US FTC's case summary is [here](#).

<sup>72</sup> The findings from the JFTC's review can be found [here](#).

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

<sup>74</sup> The case summary can be found [here](#).

<sup>75</sup> [Facebook, Inc./ Kustomer, Inc. - GOV.UK \(www.gov.uk\)](#)

<sup>76</sup> The US DOJ case page can be found [here](#)

<sup>77</sup> The FTC's case summary is accessible [here](#).

<sup>78</sup> [NortonLifeLock Inc. / Avast plc merger inquiry - GOV.UK \(www.gov.uk\)](#)

<sup>79</sup> [Microsoft Corporation / Nuance Communications, Inc. merger inquiry - GOV.UK \(www.gov.uk\)](#)



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 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.
  - g. In September 2021, the Canadian competition authority used new funding to create a new branch called “Competition through Analytics, Research, and Intelligence” (CANARI). The new branch is currently hiring staff with specialised expertise across a range of disciplines. This, includes data scientists, intelligence analysts, and design thinking experts, among others.
  - h. The Japanese competition authority 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 fact-finding surveys.
  - i. The Korean competition authority reorganised its ICT taskforce into a ‘Digital Market Response Team’ in January 2022 to strengthen law enforcement capabilities in the ICT sector. The Digital Market Response Team is collaborating with external tech experts as well as internal staff members.
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 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>80</sup> Similar tools have been developed by the Canadian competition authority’s new CANARI team, the South African competition authority and the US DOJ as part of a Data Analytics Project which it initiated. The UK 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.

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<sup>80</sup> <https://www.transcrime.it/en/datacross-ii-kick-off-meeting/>

## 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 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 Japanese competition authority has conducted a series of fact-finding surveys and published reports on business-to-business transactions in online retail platforms and app stores<sup>81</sup>, on digital advertising<sup>82</sup>, on public procurement of IT systems, and on subcontracting transactions in software. It has also begun a fact-finding survey on mobile OS (operating systems) and mobile app distribution and a follow-up survey on the financial service utilizing fintech.<sup>83</sup>
  - b. In January 2022, the French competition authority launched an inquiry into the competitive functioning of the cloud sector.<sup>84</sup> Similarly, also in 2022, the Korean competition authority embarked on a survey on the cloud market. The Japanese competition authority meanwhile already published a report on cloud services.<sup>85</sup>

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<sup>81</sup> Link to report on Business-to-Business transactions on online retail platform and app store can be found [here](#).

<sup>82</sup> Final report regarding digital advertising can be found [here](#).

<sup>83</sup> In June 2022, the Japanese competition authority 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>84</sup> See the [press release](#).

<sup>85</sup> Final report regarding cloud services is available [here](#).

- 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>86</sup>
  - d. In 2022, the Canadian competition authority will conclude a two-year market study into Canada’s digital health care sector. The study aims to understand barriers to innovation and choice and will be released in three parts over the course of 2022.<sup>87</sup> The report makes major recommendations on ways to make it easier to access and share personal health information, as sharing information securely and efficiently benefits competition. The second and third reports will be released in Fall 2022. They will focus on public procurement and health care providers, respectively.
  - e. The South African competition authority launched its online intermediation platforms market inquiry in May 2021. The inquiry is focused on digital platforms in the areas of e-Commerce marketplaces, online classifieds, software application stores, travel and accommodation aggregators, and food delivery services platforms.<sup>88</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 the final report will be published by January 2023.<sup>89</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. The Australian competition authority conducted an 18-month Digital Platforms Inquiry,<sup>90</sup> considering 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 by producing 6-monthly reports on a range of markets. This branch has now been established. Similarly, a key output of the UK CMA’s online platform and digital advertising market study was the recommendation to the UK Government that a

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<sup>86</sup> The European Commission’s preliminary report can be found [here](#).

<sup>87</sup> The first report was released in June 2022 and can be found [here](#). The second and third reports will be released in Fall 2022.

<sup>88</sup> A provisional report released in July 2022 can be found [here](#).

<sup>89</sup> [Music and streaming market study - GOV.UK \(www.gov.uk\)](#)

<sup>90</sup> The Digital Platform Inquiry is published [here](#).

new pro-competition regulatory regime is needed to govern the behaviour of platforms funded by digital advertising. In May 2022, the UK government set out in detail its intentions for the pro-competition regime.<sup>91</sup> The UK government has announced that in the 2022-23 parliamentary session it will publish a draft Digital Markets, Competition and Consumer Bill, which includes the pro-competition reforms.<sup>92</sup>

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 enforcement, and another in 2020 which focused on venture capital, highlighting what antitrust enforcers can learn about how to identify nascent competitors.
  - b. The Japanese competition authority 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 South African competition authority 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.

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<sup>91</sup> [A new pro-competition regime for digital markets - government response to consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets).

<sup>92</sup> [Queen’s Speech 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/queen-s-speech-2022).

- d. In 2019, the European Commission commissioned three external special advisers to prepare a report on Competition Policy for the Digital Era.<sup>93</sup>
  - e. In June 2022, the CMA held its inaugural Data, Technology and Analytics Conference,<sup>94</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, in August 2022 the CMA initiated an invitation to tender for external advisers to provide expert advice to the CMA on its growing programme of digital work.
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 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>95</sup> the Stigler Committee on Digital Platforms and the Judiciary Antitrust Subcommittee's Investigation of Competition in Digital Markets in the

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<sup>93</sup> Published in April 2019, the EU Special Adviser's Report on Competition Policy for the Digital Era can be found [here](#).

<sup>94</sup> The conference website can be found [here](#).

<sup>95</sup> Published in March 2019, the Report of the Digital Competition Expert Panel can be found [here](#).

US,<sup>96,97</sup> the Consultation on the Digital Services Act package<sup>98</sup> and the report by the German Commission ‘Competition Law 4.0’,<sup>99</sup> as well as the European Commission’s Staff Working Document on the Evaluation of procedural and jurisdictional aspects of EU merger control<sup>100</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:
  - a. The European Commission’s **Digital Markets Act** which is scheduled to enter into force in autumn 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>101</sup> Together with the Digital Services Act – scheduled to enter into force at the same time – the Digital Markets Act will reset the regulatory framework applicable to digital giants and the broader digital

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<sup>96</sup> Published in September 2019, the Stigler Committee on Digital Platforms report can be found [here](#).

<sup>97</sup> Published in October 2020, the US Subcommittee on Antitrust’s Investigation of Competition in Digital Markets can be found [here](#).

<sup>98</sup> Consultation on the Digital Services Act package conducted from June to September 2020 can be found [here](#):

<sup>99</sup> Published in September 2019, the Report by the Commission ‘Competition Law 4.0’ can be found [here](#).

<sup>100</sup> Published on 26 March 2021, the European Commission’s Staff Working Document can be found [here](#).

<sup>101</sup> The Digital Markets Act can be found [here](#).

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>102</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>103</sup> As at August 2022, Google, Meta and Amazon have been declared by the Bundeskartellamt to be of paramount significance for competition across markets while the proceeding against Apple is still ongoing.<sup>104</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 and app stores.<sup>105</sup> The Act is scheduled to go into full operation in the autumn of 2022 with the additional designation of “specified digital platform providers” subject to regulations in the digital advertising sector.
- 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 intermediation power of digital platforms.<sup>106</sup>
- e. In France, the ordinance transposing Directive (EU) 2019/1 (the ECN+ Directive) was published in May 2021.<sup>107</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.

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<sup>102</sup> The accompanying press release can be found [here](#).

<sup>103</sup> The amendments can be found [here](#).

<sup>104</sup> The press releases can be found [here](#) (Google), [here](#) (Meta), [here](#) (Amazon) and [here](#) (Apple).

<sup>105</sup> Further detail is available [here](#).

<sup>106</sup> The full text is available [here](#).

<sup>107</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”).



- f. In Canada, the government in 2022 made a number of amendments to the Competition Act that relate to digital competition issues.<sup>108</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 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. 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>109</sup>
- b. 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>110</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>111</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>112</sup>

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<sup>108</sup> The amendments can be found [here](#).

<sup>109</sup> [Reforming competition and consumer policy: government response - GOV.UK \(www.gov.uk\)](#).

<sup>110</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>111</sup> The letter can be found [here](#).

<sup>112</sup> The Executive Order, published in 2021, can be found [here](#).

- c. 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>113</sup>
  - d. 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 level with a mechanism that would allow quick intervention when harmful conduct occurs by 'structuring' operators i.e. identified platforms.<sup>114</sup>
  - e. 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.
  - f. 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>115</sup>. The JFTC contributes to the discussions by conducting a fact-finding survey on mobile OS and mobile app distribution.
  - g. 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.
  - h. The Australian competition authority is exploring the need for regulatory reform in Australia to address the competition and consumer concerns identified in digital platforms markets to date. On 28 February 2022 the ACCC issued a discussion paper on whether there is a need for new regulatory tools to address competition and consumer concerns regarding digital platform services,<sup>116</sup> and a report will be provided to the Australian Government in September 2022.
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, and improving the authority's ability to access information to better understand and

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<sup>113</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4194](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4194)

<sup>114</sup>The Autorité's Contribution to the Debate on Competition Policy and Digital Challenges can be found [here](#).

<sup>115</sup> Interim Report Summary of Competition Assessment of the Mobile Ecosystem, published on April 26, 2022, can be found [here](#).

<sup>116</sup> ACCC, [Digital platforms services inquiry - Discussion Paper for September 2022 interim report](#), 28 February 2022.

analyse issues. Some jurisdictions that have not proposed reforms have identified that they are also facing similar challenges and will reflect on 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>117</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>118 119 120</sup> In 2022, the General Court of the EU confirmed this approach.<sup>121</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

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<sup>117</sup> The competition policy agenda of the Federal Ministry for Economic Affairs and Climate Action up to 2025 is available [here](#).

<sup>118</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>119</sup> In addition, the proposed Digital Markets Act would require designated gatekeepers to inform the European Commission of planned acquisitions or mergers.

<sup>120</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>121</sup> Judgment of 13.07.2022, Case T-227/21, Illumina v. Commission, can be found [here](#).

that it would strengthen enforcement on transactions especially in the digital market in several ways. These include requesting firms to submit their internal documents from the early stage of 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.
  - 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>122</sup> In January 2022, the US FTC and the US DOJ launched a review of the US merger guidelines. The review is designed to incorporate recent learning into the guidelines and better account for certain features of digital markets, including zero-price dynamics, the competitive significance of data, and the network externalities.
  - g. Reforms to facilitate competition authorities' ability to prevent anticompetitive mergers, not necessarily applying only to digital markets, are under consideration in Australia.<sup>123</sup>
  - h. In the UK, the proposed reforms 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>124</sup>
66. These ongoing changes and proposals highlight the importance of policymakers 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.

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<sup>122</sup> The US FTC's report can be found [here](#).

<sup>123</sup> Protecting and promoting competition in Australia – [Speech transcript](#).

<sup>124</sup> [A new pro-competition regime for digital markets - government response to consultation - GOV.UK \(www.gov.uk\)](#)

## 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>125</sup> Recently the Australian Federal Court ordered Google to pay \$ 60 million in penalties for making misleading representations to consumers.
- 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>126</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

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<sup>125</sup> A summary is published [here](#).

<sup>126</sup> A summary is published [here](#).

and use of personal data and the set-up of an opt-in as default option for data sharing consent<sup>127</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>128</sup>
  - d. In India, the CCI is investigating the updated privacy policy and terms of service by WhatsApp whereby the users have to accept the unilaterally dictated "take it or leave it" terms in their entirety.
  - e. In Germany, the Bundeskartellamt imposed extensive restrictions on Facebook regarding the processing of user data.<sup>129</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 FTC began a rulemaking proceeding on digital commercial surveillance, the business of collecting, analyzing, and profiting from information about people. The notice seeks to explore the harm stemming from digital commercial surveillance and whether new rules are needed to protect people's privacy and information.
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 Japanese competition authority 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>130</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

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<sup>127</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>128</sup> A summary is published [here](#)

<sup>129</sup> The BKartA's summary can be found [here](#).

<sup>130</sup> Further detail is available [here](#)

recommendations to government and parliament outlining a framework addressing the issues raised by big data.<sup>131</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>132</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>133</sup>
- 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 FTC recently adopted a policy statement on enforcement related to gig work that recognises both consumer protection and competition issues facing gig workers.<sup>134</sup> The statement notes that an integrated approach to investigating unfair, deceptive, and anticompetitive conduct is especially appropriate for the

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<sup>131</sup> A summary of the report is available [here](#)

<sup>132</sup> [Online safety and competition in digital markets: a joint statement between the CMA and Ofcom \(publishing.service.gov.uk\)](#).

<sup>133</sup> The statement is published [here](#).

<sup>134</sup> The statement can be found [here](#).

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>135</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.
  - 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>136</sup> Prior to this decision, in the same case, the Autorité imposed in 2021 a € 500 million fine<sup>137</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

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<sup>135</sup> Parliament of Australia, [Treasury Laws Amendment \(News media and digital platforms mandatory bargaining code\) Bill 2021](#), 25 February 2021

<sup>136</sup> See the Autorité’s [Decision 22-D-13 of 21 June 2022](#) regarding practices implemented by Google in the press sector.

<sup>137</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.



regarding the remuneration due to them and their related rights, pending the decision on the merits.<sup>138</sup>

- c. Japan's competition authority 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.
- d. 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 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.
- e. 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>139</sup>
- f. Finally, highlighting the pace of change in digital markets, the German competition authority is currently examining the recently launched Google News Showcase service, including whether the contractual terms offered are to the detriment of publishers.<sup>140</sup> This was initiated in June 2021, and in early 2022 the Bundeskartellamt conducted consultations in the press publishing sector to determine whether measures proposed by Google are suitable in addressing the competition concerns.

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<sup>138</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>139</sup> [Advice to DCMS on how a code of conduct could apply to platforms and content providers - GOV.UK \(www.gov.uk\)](#).

<sup>140</sup> A summary is available [here](#).

## Domestic and international collaboration with non-competition authorities

### Domestic collaboration

73. G7 and guest competition authorities are engaging regularly with other domestic regulators and policymakers 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>141</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 policymakers at all levels of government in the context of its advocacy work. In Australia, the ACCC regularly engages with other government agencies through formal Memorandums of Understanding (MoUs) allowing improved information sharing. 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>142</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>143</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>144</sup> In Australia, the Digital Platforms Regulators Forum (DP-REG) was launched in 2022 to provide more formal engagement between the ACCC, the

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<sup>141</sup> See the *Autorité's Decision 21-D-07 of 17 March, 2021* in the sector of mobile applications advertising on iOS.

<sup>142</sup> A related press release is available [here](#).

<sup>143</sup> Further information is available on the DRCF's webpage [here](#).

<sup>144</sup> [Digital Regulation Cooperation Forum workplan 2022 to 2023 – GOV.UK \(www.gov.uk\)](#).

Australian Communications and Media Authority (ACMA), the Office of the Australian Information Commissioner, and the Office of the eSafety Commissioner. 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>145</sup>

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<sup>145</sup> For more information on the ECN, see [here](#).

Through the ECN, the competition authorities inform each other of proposed 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 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>146</sup>
81. Authorities also continue to work together through existing international competition and consumer networks such as the Organisation for Economic Co-operation and Development (OECD), the International Competition Network (ICN) and the International Consumer Protection Enforcement Network (ICPEN).
  - a. The ICN, a group of 140 of the world's competition agencies, has addressed key digital issues in recent years, such as developing normative guidance on assessing dominance in digital markets, and has also focused resources on multi-disciplinary issues such as its new multiyear project on the intersection between competition, consumer protection, and privacy which is coordinated by the competition authorities of Australia, Canada, USA and Italy. It has also increased its coordination and focus on digital matters through the creation of the role of ICN Vice Chair Digital Coordination and Asia Pacific Liaison.
  - 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

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<sup>146</sup> The accompanying press release can be found [here](#).

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. 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>147</sup> On the other hand, if the application of the promising new regulatory and competition law approaches should 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>148</sup>
86. 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

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<sup>147</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.

<sup>148</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](#).

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.

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

## 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.**

The Bureau has active investigations against large digital platforms relating to conduct in the digital economy. Also, in May 2022, the Competition Bureau (“Bureau”) ended an abuse of dominance [investigation](#) against Turo Inc. The investigation was about Turo’s exclusivity policy. Users could not list the same vehicle on any other car-sharing platform. Turo ended the policy and amended its terms of service in Canada.

This year, we will conclude a two-year market study into Canada’s digital health care sector. The study aims to understand barriers to innovation and choice. The market study is being released in three parts over the course of 2022:

- a. The [first report](#) was released in June 2022. It focuses on health data and information. We made three recommendations to Canadian policymakers. To improve competition, we recommend making it easier to access and share personal health information
- b. The second and third reports will be released in Fall 2022. They focus on public procurement and health care providers.

**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).**

### New Digital Enforcement and Intelligence Branch

In September 2021, we used new funding to create a new branch that we call the “Competition through Analytics, Research, and Intelligence” (CANARI) team.

CANARI focuses on a number of areas including:

- a. Using data analytics to more effectively enforce and promote competition
- b. Understanding how firms are using data and technology, and how this may impact competition
- c. Employing behavioural insights to better understand consumer behaviour



- d. Using advanced intelligence techniques, and
- e. Identifying the types of remedies needed to protect competition.

We are developing the capabilities of the new Branch. We hired staff with specialized expertise, including data scientists, intelligence analysts, and design thinking experts. The team will grow over the next few years to about 25-35 employees.

#### Collusion Risk Assessment Tool

In June 2022, CANARI released the [Collusion Risk Assessment Tool](#). The tool helps ensure a fair and competitive procurement process by identifying potential bid rigging. Procurement agents can access the tool free online.

#### The Bureau Innovation Garage

The Bureau Innovation Garage (BIG) helps employees explore new digital technologies. It allows employees to collaborate, experiment with new concepts and pilot new ideas. CANARI is making improvements to the BIG to allow for even greater benefits for the Bureau.

**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.**

#### 2022 amendments to the Competition Act

The Government of Canada made a number of [amendments](#) to the *Competition Act* in 2022 that relate to digital competition issues, including:

- a. increasing maximum fines and administrative monetary penalties
- b. clarifying that incomplete price disclosure (drip pricing) is false or misleading
- c. expanding the scope of business practices that may amount to an abuse of dominance, and
- d. inserting new considerations regarding digital commerce that may be taken into account by the Competition Tribunal, including network effects, non-price competition, and privacy.

## Canada's Digital Charter: Trust in a digital world

In June 2022, the government proposed the [Digital Charter Implementation Act, 2022](#). The Act will modernize Canada's framework for the protection of personal information in the private sector. It will also introduce new rules for the development and deployment of artificial intelligence (AI).

The Act includes a number of requirements to do with privacy. The main requirement that addresses digital competition will give Canadians the freedom to move their information securely from one organization to another.

**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 frequently with staff from 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 regularly with other federal departments and agencies. We also work with municipal, provincial and territorial governments. We work with regulators and policymakers to assess the impacts of new and existing policies and regulations on competition.

- a. We prepared a submission to Senator Howard Wetston entitled "[Examining the Canadian Competition Act in the Digital Era](#)."
- b. We provided a number of submissions to governments. We proposed enabling access to personal health information in our [letter to the Ontario Ministry of Health](#). We also provided a [submission to Innovation, Science, and Economic Development Canada's consultation](#) on a modern copyright framework for artificial intelligence and the internet of things.
- c. We developed and shared the [Competition Assessment Toolkit](#). This is a step-by-step guide to identify policies that may impact competition. The Toolkit contributed to another tool developed by Canada's Treasury Board Secretariat.

The Treasury Board tool will be used by federal regulators to assess the impacts of regulations on the competitiveness of Canadian businesses.

- d. 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:
- (1) the Office of the Privacy Commissioner of Canada
  - (2) the Canadian Radio Television and Telecommunications Commission (CRTC)
  - (3) Justice Canada
  - (4) Global Affairs Canada
  - (5) Finance Canada
  - (6) the Privy Council Office, and
  - (7) the Treasury Board Secretariat.

Canada's proposed [Digital Charter Implementation Act, 2022](#) will allow the Competition Bureau to collaborate more closely with the Office of the Privacy Commissioner of Canada and the CRTC.

#### Consumer Protection

The Bureau's annual [Fraud Prevention Month campaign in 2022](#) focused on impersonation scams, including fake online reviews. We posted a series of fraud prevention awareness material and a [consumer alert](#) on fake reviews on social media.

In April 2022, the Bureau reached a [consent agreement with NuvoCare and its founder Ryan Foley](#). It will prevent them from making false, misleading or unsupported marketing claims to consumers about products they market online for weight loss. The settlement included a CA\$100,000 penalty.

The Bureau is an active member of several international and domestic partnerships and working groups. These include the International Consumer Protection and Enforcement Network (ICPEN) and the Global Anti-Fraud Enforcement Network (GAEN).

- a. In May 2022, the Bureau and the Latvia Consumer Rights Protection Centre, co-chaired a "Dark Patterns" workshop for ICPEN members.
- b. The Bureau is an active member of ICPEN's [econsumer.gov](#) advisory group. The group responds to the challenges of internet fraud. They gather and share cross-border e-commerce complaints, statistics and trends. This is a service provided to ICPEN's more than 40 consumer protection agencies around the world.

- c. The Bureau also continues to share information with members of GAEN. The network shares information on email compromise scams, as well as Romance scams which are conducted over the internet.

## 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 existing tools in a dynamic way 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 intervene:

- a. at the interim measures stage: The *Autorité*, in 2020, made use of this instrument to order Google to negotiate with publishers and press agencies the remuneration due to them regarding related rights.<sup>149</sup>
- b. to settle and accept commitments: In 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>150</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 the French market for non-search related online advertising<sup>151</sup>. Regarding digital advertising, the *Autorité*, in the Google Newscorp<sup>152</sup> decision of June 2021, addressed for the first time the issue of programmatic advertising. The *Autorité*'s

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<sup>149</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>150</sup> See the *Autorité*'s [Decision 22-D-13 of 21 June 2022](#) regarding practices implemented by Google in the press sector.

<sup>151</sup> See the *Autorité*'s [Decision 22-D-12 of 16 June 2022](#) regarding practices implemented in the online advertising sector.

<sup>152</sup> See the *Autorité*'s [Decision 21-D-11 of 07 June 2021](#) regarding practices implemented in the online advertising sector.

decision provided quick and effective responses to businesses and publishers harmed by Google practices (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. to 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>153</sup>
- d. to impose financial penalties: The *Autorité* has imposed heavy fines sanctioning practices of major digital players, notably Google (220 million in the Google Newscorp case and 150 million in the Google Gibmedia case mentioned above; see also a 500 million fine upon Google for non-compliance with several injunctions issued in the context of the interim measures decision related to publishers' and press agencies' remuneration mentioned above).<sup>154</sup>

The *Autorité* has also fined Apple (€ 1,1 billion – highest sanction ever imposed by our agency) for engaging in anticompetitive agreements within its distribution network and abuse of a situation of economic dependency with regard to its “premium” independent distributors, therefore using a concept rarely used until now, the concept of abuse of economic dependence.<sup>155</sup>

We 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>156</sup> While the transaction was cleared following an in depth

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<sup>153</sup> See the *Autorité's* [Decision 19-D-26 of December 19, 2019](#), regarding practices implemented in the sector of online search advertising sector.

<sup>154</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>155</sup> Two of Apple wholesalers, Tech Data and Ingram Micro, were also fined, respectively, € 76,1 million and € 62,9 million for one of the anticompetitive agreement practices.

<sup>156</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

investigation, the *Autorité* had to take into account network cross-effects, and took an interest in the importance of data in this transaction. Additionally, to assess the effects of the transaction, the *Autorité* examined the ability to stimulate competition not only of current competitors, but also of potential competitors, namely Facebook, Amazon and Google.

**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 capabilities and expertise in the digital field, in order to be able to timely adapt its approach and tools to tackle the challenges encountered in such field.

First, through the creation of a dedicated digital economy unit, in January 2020, which includes a wide range of profiles, such as engineers, lawyers, economists and data science specialists, and will add strong value to current and upcoming investigations of the agency.

The unit is tasked with developing in-depth expertise on all digital subjects, collaborate on investigations into anticompetitive practices in the digital economy and contribute to studies on new issues related to developments in digital technology (including, for example, the on-going inquiry on the cloud sector, see below). The new service is also expected to contribute to the analysis of the most complex cases regarding company mergers involving actors from the digital sector, and litigation procedures that concern compliance with competition law in a digital environment (e.g. breaches committed by digital means, regarding problems with referencing, ranking bias or collusion through the use of algorithms).

The digital economy unit will continue to grow, with the implementation of new investigation tools aimed at monitoring in real time the evolution of the Terms of Services of the main online service providers, as well as detecting collusion in public procurements, using open-access databases combined with in-house indicators. The unit is also involved in the second phase of the DATACROSS project<sup>157</sup>, which aims to improve

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policy and digital challenges, February 2020; joint paper with the Bundeskartellamt on data and its implications for Competition Law, May 2016).

<sup>157</sup> <https://www.transcrime.it/en/datacross-ii-kick-off-meeting/>

the prototype tool assessing corruption risk factors in firms' ownership structure (risks of collusion, corruption and money laundering in the European single market).

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 the General Rapporteur with suggestions for sector-specific inquiries and studies/reports in the digital sector (one of which leading to the launch of the on-going study on cloud computing, see below), and issuing internal documentation aimed at providing support to rapporteurs confronted with cases in the digital sector (including an "analysis grid" covering questions such as the determination of the relevant market, the demonstration of a dominant position and of an abuse, the evaluation of efficiency gains, and imposition of appropriate sanctions or commitments, in digital markets cases). Following these achievements, the working group was transformed in 2022 into a digital network which will carry 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 have also engaged in a constant process of enriching our knowledge of the specificities of digital markets, through the preparation of relevant targeted studies (joined study with the *Bundeskartellamt* on algorithms and competition, published in November 2019<sup>158</sup>; *Autorité's* study on competition and e-commerce, June 2020<sup>159</sup>) and additional publications (*Autorité's* contribution to the debate on competition policy and digital challenges, February 2020<sup>160</sup>; joint paper with the *Bundeskartellamt* on data and its implications for Competition Law, May 2016<sup>161</sup>).

The *Autorité* has also conducted sector-specific inquiries, the most recent example being the on-going inquiry into the competitive functioning of the cloud sector launched in January 2022<sup>162</sup>. During the last years, the *Autorité* published several opinions on the matters investigated (i.e. on the competitive situation in the sector of new technologies applied to financial activities, and more specifically, to payment activities<sup>163</sup>; on data

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<sup>158</sup>See the [joint study of November 2019](#).

<sup>159</sup>See the [study of May 2020](#).

<sup>160</sup>See the [contribution of February 2020](#).

<sup>161</sup>See the [joint study of May 2016](#).

<sup>162</sup>See the [press release](#).

<sup>163</sup>See the *Autorité's* [Opinion 21-A-05 of 29 April 2021](#) on the sector of new technologies applied to payment activities.



usage in the online advertising sector<sup>164</sup>). In such instances, the *Autorité* is exercising its advisory role and its position can inspire new reforms or provide guidance to economic stakeholders. The *Autorité's* opinions can drive the definition of public policies and, in some cases, highlight unexplored or under-exploited growth opportunities.

**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 will be key in addressing competition law issues in the digital sector.

In the *Autorité's contribution to the debate on competition policy and digital challenges*, published in February 2020, we suggested several ways to tackle the challenges arising from the digital economy, including the possibility of complementing competition law, at national or European level, with a mechanism allowing to address harmful anticompetitive behaviors implemented by « structuring » operators. We also noted the lack of control of certain transactions below thresholds liable to raise competition concerns, and accordingly contemplated the use of the mechanism under article 22 of Regulation 139/2004 or the relevance of introducing a mandatory information requirement of every merger carried out by digital structuring platforms. The *Autorité* has taken part in the following initiatives:

- 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 ("NCA") to refer the proposed acquisition of Grail by the Illumina Group to the Commission<sup>165</sup> on the basis of Article 22. Following this referral, the Commission has decided to open a phase II examination of said transaction.
- b. The **recent adoption of the Digital Markets Act**, the EU regulation aiming at ensuring contestable and fair markets in the digital sector, by regulating practices implemented by large digital platforms. The *Autorité* has been strongly committed to an ambitious and effective DMA, being involved in the negotiations from the outset, in order to promote an active role for national competition

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<sup>164</sup>See the *Autorité's Opinion 18-A-03 of 6 March 2018* regarding data usage in the online advertising sector.

<sup>165</sup> The *Autorité* was subsequently joined by Belgium, Greece, Iceland, the Netherlands and Norway.

authorities in implementing the text, with the aim of ensuring optimal coordination between competition law and the DMA, to ensure that the DMA is as effective as possible. Following the adoption of the DMA, the *Autorité* is fully prepared to work in close coordination with the European Commission in order to support the latter in implementing the DMA and ensure that its provisions are smoothly coordinated with competition law.

In France, the **ordinance transposing Directive (EU) 2019/1 (the ECN+ Directive)** has been published in May 2021<sup>166</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*:

- a. **to set its own priorities** and reject complaints that do not correspond to them, thus allowing it to better allocate its resources, which can be fully devoted to the rapid resolution of the most important and harmful cases (including complex cases involving large digital platforms or algorithmic processes).
- b. **to file an action on its own initiative to impose interim measures**, no longer simply following a request made by a company, incidentally to an application on the merits. This new opportunity appears to be particularly relevant in the digital markets, where the positions of stakeholders can change very rapidly, and should furthermore prove useful in overcoming any fear of retaliation on the part of would-be complainants.
- c. **to issue structural injunctions** (e.g. the divestiture of a subsidiary or business) as well as behavioural injunctions, thus enhancing the deterrence of antitrust enforcement, especially toward large digital platforms that may no longer fear financial penalties.

Furthermore, the “DDADUE Law” of December 2020 modernized the *Autorité’s* internal procedures, by allowing our agency to fasten litigation proceedings, while respecting the adversarial principle, i.a. by abolishing the leniency notice, expanding the scope of cases that can be examined by a single member of the Board, and extending the scope of the simplified litigation procedure before the *Autorité* that accelerates the written adversarial procedure. Such measures will be key in the swift processing of cases necessary to keep pace with the fast-evolving nature of digital markets.

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<sup>166</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”).

**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 its work to promote competition in digital markets is coherent with other regulatory regimes in digital markets. In this regard, Article R. 463-9<sup>167</sup> of the French commercial code provides that the *Autorité* must communicate to every independent regulatory authority, all proceedings that are initiated which relate to sectors falling within their areas of expertise. These authorities then have two months to submit their observations.

The authorities concerned include, inter alia the “National Commission on Informatics and Liberty” (CNIL), the “French Broadcasting Regulator” (CSA) and the “French Telecommunications and Posts Regulator” (ARCEP).

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) 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. Both agencies have maintained a very close and fruitful dialogue in 2022, as illustrated by President of the *Autorité* Benoit Coeuré’s speech before the Board of the CNIL, and President of the CNIL Marie-Laure Denis’ planned visit to the Board of the *Autorité*. 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 interests.

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<sup>167</sup> Article R. 463-9 of the French Commercial Code can be found [here](#)

## 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 August 2022, designation decisions according to Section 19a(1) GWB have been rendered against Google, Meta and Amazon, declaring these undertakings to be of paramount significance for competition across markets.<sup>168</sup> In all three 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 Apple is still ongoing.<sup>169</sup>

The authority is already conducting a number of cases under Section 19a(2) GWB which examine specific practices of the aforementioned undertakings, namely Google’s data processing terms, the Google News Showcase service, the Google Maps Platform, the link

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<sup>168</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).

<sup>169</sup> Bundeskartellamt, [press release](#) of 21 June 2021.

between the Oculus (now Meta Quest) virtual reality products and the social network Facebook and Apple's App Tracking Transparency Framework.<sup>170</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 without users' freely given consent to combine them with "on-Facebook" data.<sup>171</sup> In its proceeding against the hotel booking platform Booking.com, the Bundeskartellamt demanded Booking to refrain from the use of "narrow" MFN clauses in its terms of business applicable to hotels listed on the platform. Those clauses prohibit hotels from undercutting prices shown on Booking.com in their direct online and offline sales.<sup>172</sup> In May 2021, the German Federal Court of Justice confirmed the Bundeskartellamt's decision.<sup>173</sup>

In August 2022, the Bundeskartellamt, in the context of its sector inquiry into non-search online advertising published a report for public discussion.<sup>174</sup> The report highlights that non-search advertising is based on a highly complex system of automated trading in the online advertising space which many people find quite opaque. It also becomes clear that Google holds a strong market position on almost all levels of the value chain, in which – as things stand today – user data play a particularly important role. In addition, Google also controls important parts of the software infrastructure on the user side, such as the Chrome browser and the Android mobile operating system. Overall, this leaves the company with an unusually large scope for shaping the competitive process in its favour.

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

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<sup>170</sup> Bundeskartellamt, [press release](#) of 25 May 2021 (Google data case); Bundeskartellamt, [press release](#) of 4 June 2021 (Google News Showcase); Bundeskartellamt, [press release](#) of 21 June 2022 (Google Maps Platform); Bundeskartellamt, [press release](#) of 28 January 2021 (Oculus/Meta Quest); Bundeskartellamt, [press release](#) of 21 June 2022 (Apple's App Tracking Transparency Framework).

<sup>171</sup> Bundeskartellamt, [press release](#) of 7 February 2019, [case summary](#).

<sup>172</sup> Bundeskartellamt, [press release](#) of 23 December 2015, [case summary](#).

<sup>173</sup> [Courtesy translation of press release no 099/2021](#) published by the Federal Court of Justice on 18 May 2021 provided by the Bundeskartellamt.

<sup>174</sup> Bundeskartellamt, [press release](#) of 29 August 2022, [executive summary](#).

standards for data transfer and cooperation regarding R&D raised no objections.<sup>175</sup> In another proceeding the Bundeskartellamt assessed mobility platforms, i.e. service providers which mainly offer online solutions for integrated route planning. Based on a preliminary assessment the authority held, inter alia, that these mobility platforms are entitled to access train traffic data, such as information on delays or cancellations, from Deutsche Bahn, the dominant rail transport company in Germany.<sup>176</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 2022, the Bundeskartellamt has recruited additional data scientists and IT experts.

Among other measures, the Bundeskartellamt set up a “Think Tank Internet” in early 2015 in which legal experts and economists studied the latest economic research on platforms and networks and discussed how best to apply the results of their studies to antitrust case practice. The conceptual work on the digital economy was supported by the Bundeskartellamt’s General Policy Division. In August 2019, in the course of restructuring the General Policy Division, a unit exclusively focussing on the “digital economy” was established to continue the work on related conceptual projects and especially to further support the work of the decision divisions in the digital area and on data-related issues. The Digital Economy Unit 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

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<sup>175</sup> Bundeskartellamt, [press release](#) of 24 May 2022.

<sup>176</sup> Bundeskartellamt, [press release](#) of 20 April 2022.

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. Also because of the Russian war in Ukraine and its effect on fuel prices and energy markets, providing consumers with real-time information on fuel prices for close to 15,000 petrol stations and monitoring electricity and gas wholesale trading including production continue to play an important role.

**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.**

Our toolkit has developed considerably over the years. With the 9<sup>th</sup> amendment to the GWB, which entered into force in 2017, Germany was one of the first countries to incorporate provisions pertaining to the digital economy into competition law. The 9<sup>th</sup> amendment, inter alia, introduced an explicit list of market power factors of particular relevance for platforms and networks and it provided helpful clarification on zero-price services as well.

Further significant changes were introduced with the 10<sup>th</sup> amendment to the GWB in 2021. The arguably most significant change was the newly introduced provision under Section 19a (see already answer to question 1 above). This novel form of abuse control is based on the rationale that digital markets might require more effective antitrust intervention. This 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>177</sup> In the meantime, discussions about another amendment to the GWB have started.<sup>178</sup> While most of the issues that a new amendment to the GWB most likely will address are not directly related to digital markets, there are also ongoing discussions on whether it is necessary to modify the merger control regime in order to better account for the specificities of digital markets.<sup>179</sup>

At European level, the Digital Markets Act (DMA), which is expected to enter into force in October 2022, will play an important role in protecting the competitiveness of digital markets. Even though the European Commission will be the sole enforcer of the DMA, national competition authorities can be given investigative powers at a national level. The Bundeskartellamt has argued in favour of passing legislation which gives it these powers, also because there are strong complementarities between the DMA and Section 19a GWB.<sup>180</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

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<sup>177</sup> The Federal Ministry for Economic Affairs and Climate Action: [The competition policy agenda up to 2025](#).

<sup>178</sup> A first draft for an amendment has been published in September 2022, see [announcement](#).

<sup>179</sup> This topic was also discussed at the most recent meeting of the Working Group on Competition Law on 29 September 2022, see [press release](#).

<sup>180</sup> Statement by Andreas Mundt, President of the Bundeskartellamt, at the public consultation of the German Bundestag on the topic “Digital Markets Act”, [Ausschussdrucksache 20\(9\)59](#) (in German).



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 the proceeding under Section 19a(2) GWB concerned with the Google News Showcase service the Bundeskartellamt is examining, inter alia, whether the relevant contractual terms include unreasonable conditions to the detriment of the participating publishers and, in particular, make it disproportionately difficult for them to enforce the ancillary copyright for press publishers [*Leistungsschutzrecht der Presseverleger*]. In early 2022 the Bundeskartellamt conducted consultations in the press publishing sector to determine whether measures proposed by Google are suitable in addressing the competition concerns.

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. A sector inquiry into video and messenger services has been ongoing since November 2020 and a new sector inquiry into scoring in the online retail sector, initiated in March 2022, deals with retailers' practices to check consumers' credit standing, i.e. their ability to pay when shopping online.<sup>181</sup>

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<sup>181</sup> Bundeskartellamt, [press release](#) of 12 November 2020 (video and messenger services); Bundeskartellamt, [press release](#) of 31 March 2022 (scoring).

In early 2021, the Bundeskartellamt signed a declaration of intent for a continuous cooperation with the Federal Office for Information Security (BSI) in the area of digital consumer protection. The BSI is the federal cyber security authority which ensures secure digitalisation in Germany. Apart from intensifying and further extending the exchange between the two authorities – which already occasionally took place at working level – the cooperation also envisages mutual assistance in tasks relating to consumer protection. The two authorities are pooling their competences and expertise for the consumers' protection and benefit.

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 is currently part of the team of an ICN Steering Group project focussing on competition law enforcement at the intersection between competition, consumer protection and privacy.

## 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 Italian Competition Authority (AGCM) has intervened with its competition enforcement and advocacy powers in digital markets: while acknowledging the positive contribution of digital platforms to our economies, ensuring that these markets are competitive and dynamic is central to AGCM's priorities. This is evident in recent investigations described below.

In October 2021, the 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 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.

In November 2021, the Authority ascertained a breach of Art. 101 TFEU by Apple and Amazon for restricting certain resellers of Apple products, including those of the Apple-owned brand Beats, from accessing the online marketplace of Amazon in Italy<sup>182</sup>. According to the Authority, in absence of a selected distribution system based on clear and objective criteria, Amazon and Apple, through an agreement signed in October 2018, introduced a purely quantitative restriction on the number of resellers operating on Amazon.it, identified in a discriminatory manner, thus preventing them from accessing Italy's most important distribution channel for online sales, especially for small and medium sized enterprises. Moreover, the agreement restricted cross-border sales, as it prevented sales of Apple and Beats products to resellers established outside certain EU Member States. These resellers were also discriminated against because of their geographical origin. Finally, according to the AGCM, the agreement affected the discounts available for Amazon and Beats products sold on Amazon.it. In particular, the Authority argued that, by restricting the number of resellers allowed to use Amazon.it, the general level of discounts decreased to the detriment of consumers.

In November 2021, the Authority fined Amazon € 1.13 billion for a breach of Art. 102 TFEU, by leveraging its dominant position in the Italian market for intermediation services

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<sup>182</sup> See Case n. I842, press release of 17 December 2021, <https://en.agcm.it/en/media/press-releases/2021/12/I842>

on marketplaces in order to favour the adoption of its own logistics service - Fulfilment by Amazon (FBA) - by sellers active on Amazon.it, to the detriment of the logistics services for e-commerce offered by competing logistics operators<sup>183</sup>. Moreover, according to the Authority, Amazon's abuse was capable of further strengthening its dominant position by rendering costly multi-homing by sellers active on Amazon.it marketplace. The Authority imposed behavioural measures on Amazon that will be subject to review by a monitoring trustee. In particular, Amazon shall grant sales benefits and visibility on Amazon.it to all sellers which are able to comply with fair and non-discriminatory standards for the fulfilment of their orders, to be defined and published by Amazon. The European Commission has opened an investigation regarding similar concerns that covers the European Economic Area, with the exception of Italy<sup>184</sup>.

In July 2022, the Authority opened an investigation against Google for an alleged breach of Art. 102 TFEU, by refusing interoperability in sharing data on its platform with other platforms and, in particular, with the Weople App, managed by Hoda<sup>185</sup>. The latter has developed new services through its innovative data investment bank: by signing up to its App Weople, 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 constrain the economic benefits that consumers can derive from their data. At the same time, the alleged abuse could restrict competition because it limits the ability of alternative operators to develop innovative data-based services.

Moving to advocacy, the AGCM submitted in March 2021 a comprehensive advocacy report<sup>186</sup> recommending pro-competitive reforms that could contribute to accelerate economic recovery post Covid-19 and improve growth prospects in the medium and long

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<sup>183</sup> See Case no A528 press release of 9 December 2021, <https://en.agcm.it/en/media/press-releases/2021/12/A528>

<sup>184</sup> Amazon appealed the AGCM infringement decision to Italy's Court of First Instance which, in March 2022, rejected Amazon's request to suspend the payment of the pecuniary sanction; at the same time, the Court postponed the implementation of the remedies.

<sup>185</sup> See Case no A552, press release of 14 July 2022, <https://en.agcm.it/en/media/press-releases/2022/7/A552>

<sup>186</sup> See the AGCM opinion no S4143 "Proposte di riforma concorrenziale ai fini della legge annuale per il mercato e la concorrenza anno 2021", <https://www.agcm.it/dotcmsdoc/allegati-news/S4143%20-%20LEGGE%20ANNUALE%20CONCORRENZA.pdf>.

term. The report also includes proposals to update the Italian competition law, some of which were approved by the Parliament on 2 August 2022 (see reply to question n. 3).

**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 AGCM organizational structure based on economic industries is accompanied by two cross-sectoral working groups (on digital and algorithms) to deal with the digitalization and the acquisition of IT / data science capabilities<sup>187</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.**

As anticipated above (question n.1), a law passed by the Parliament on 2 August 2022 has brought new changes in merger control and new tools to tackle the bargaining power of digital platforms<sup>188</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 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

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<sup>187</sup> For more information, see Italy's submission to the G7 Compendium of approaches to improving competition in digital markets, 29 November 2021, available at:

<https://www.gov.uk/government/publications/compendium-of-approaches-to-improving-competition-in-digital-markets>

<sup>188</sup> See Draft Law n. 2469, approved in second reading by the Senate on August 2, 2022. The text is available at: <https://www.senato.it/service/PDF/PDFServer/BGT/01358951.pdf>

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 € 5 billion.

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.

**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 recent investigation on Google’s concerning the interoperability of its platform raises issues at the intersection between competition and data protection conducts (see last paragraph of the reply to question n. 1). One question is to what extent data portability, allowed by Art. 20 of GDPR, insofar as it facilitates data circulation and users’ mobility, may allow new entrants the opportunity to exert competitive pressure on companies such as Google, which have established their dominance through the creation of ecosystems alimeted via the collection and processing of virtually unlimited amounts of data. Moreover, the novel issue of this case is whether data portability, if accompanied by effective interoperability mechanisms, may enable consumers to explore ways of monetizing from the use of their data.

This investigation will benefit from the findings of an inquiry on big data, carried out jointly with the Communications Regulator and the Data Protection Authority in 2020<sup>189</sup>. The inquiry was a first attempt to explore the different dimensions of consumer data and

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<sup>189</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, [https://one.oecd.org/document/DAF/COMP/WD\(2020\)33/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2020)33/en/pdf)

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>190</sup>.

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<sup>190</sup> See Cases no. PS11147-PS11150, press release of 26 November 2021, <https://en.agcm.it/en/media/press-releases/2021/11/PS11147-PS11150>

## 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>191</sup> of the AMA. The JFTC approved a commitment plan submitted by Amazon Japan to address antitrust concerns.<sup>192</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>193</sup>)) violated the Article 19 (Trading on Restrictive Terms)<sup>194</sup> of the AMA. The JFTC approved commitment plans submitted by Booking.com B.V. and by the ELPS to address antitrust concerns.<sup>195 196</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>191</sup> Unfair Trade Practices stipulated in the Article 2, Paragraph (9), Item (v) [Abuse of Superior Bargaining Position] of the AMA.

<sup>192</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2020/September/200910.html>

<sup>193</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>194</sup> Unfair Trade Practices stipulated in the Article 2, Paragraph (9), Item (vi) [Trading on Restrictive Terms] of the AMA.

<sup>195</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2022/March/220316.html>

<sup>196</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.

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>197</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.

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>198</sup>

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<sup>197</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2019/December/191217.html>

<sup>198</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/January/210114.html>

Furthermore, in June 2022, the JFTC made a policy statement that it would actively seek information and comments from third parties, concerning cases mainly in digital market, regardless of whether or not the Phase II review begins. At the same time, the JFTC individually started collecting 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 addition to enforcement and merger review, the JFTC has conducted a series of fact-finding surveys 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>199</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>200</sup>, and (5) subcontracting transactions in software services (published on June 29, 2022). Furthermore, the JFTC started a new fact-finding survey on mobile OS and mobile app distribution in October 2021, and a follow-up survey on the financial service utilizing fintech in March 2022.

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 fact-finding surveys to individual enforcement, such as by proactively utilizing information provided through fact-finding surveys.

**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.

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<sup>199</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2019/October/191031.html>

<sup>200</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/February/210217.html>

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 fact-finding surveys 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 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>201</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 fact-finding surveys.

**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>201</sup> <https://www.jftc.go.jp/en/pressreleases/yearly-2021/March/210331.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.

**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>202</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 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 Competition Policy Research Center (“CPRC”), which discussed various issues and

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<sup>202</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)

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>203</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>203</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 wide portfolio of digital cases.

In 2022, the CMA opened 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>204</sup>; Google's conduct in relation to its distribution of apps on Android devices in the UK, in particular Google's Play Store rules<sup>205</sup>; whether Google has abused a dominant position through its conduct in ad tech<sup>206</sup>; and Google and Meta's 'Jedi Blue' agreement in relation to Meta's use of Google's header bidding product.<sup>207</sup>

In addition, the CMA has continued investigating Apple's conduct in relation to the distribution of apps on iOS and iPadOS devices in the UK, in particular, the terms and conditions governing app developers' access to Apple's AppStore.<sup>208</sup> The CMA is also investigating whether Facebook is abusing its dominant position in the social media or online advertising markets through its collection and use of advertising data.<sup>209</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 and is continuing to monitor Google's compliance with the commitments.<sup>210</sup>

The CMA actively reviews mergers in digital markets. Recent cases include Meta/Giphy<sup>211</sup>, which concerns competition in the social media and display advertising markets; Norton/Avast<sup>212</sup>, which concerns antivirus and privacy software, and Microsoft/Activision

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<sup>204</sup> [Investigation into Amazon's Marketplace - GOV.UK \(www.gov.uk\)](#)

<sup>205</sup> [Investigation into suspected anti-competitive conduct by Google - GOV.UK \(www.gov.uk\)](#)

<sup>206</sup> [Investigation into suspected anti-competitive conduct by Google in ad tech - GOV.UK \(www.gov.uk\)](#)

<sup>207</sup> [Investigation into suspected anti-competitive agreement between Google and Meta and behaviour by Google in relation to header bidding - GOV.UK \(www.gov.uk\)](#)

<sup>208</sup> [Investigation into Apple AppStore - GOV.UK \(www.gov.uk\)](#)

<sup>209</sup> [CMA investigates Facebook's use of ad data - GOV.UK \(www.gov.uk\)](#)

<sup>210</sup> [Investigation into Google's 'Privacy Sandbox' browser changes - GOV.UK \(www.gov.uk\)](#)

<sup>211</sup> [Facebook, Inc \(now Meta Platforms, Inc\) / Giphy, Inc merger inquiry - GOV.UK \(www.gov.uk\)](#)

<sup>212</sup> [NortonLifeLock Inc. / Avast plc merger inquiry - GOV.UK \(www.gov.uk\)](#)

Blizzard<sup>213</sup>, which concerns competition in video games and related areas. In September 2022, the CMA referred Microsoft/Activision Blizzard for an in-depth Phase 2 investigation after finding in its Phase 1 investigation that the merger could lead to competition concerns.<sup>214</sup> The CMA has recently completed investigations into Facebook/Kustomer<sup>215</sup>, which concerned online display advertising, customer relationship management software, and business to consumer messaging, and Microsoft/Nuance<sup>216</sup>, which concerned voice recognition and transcription software. In recent years, the CMA has conducted in-depth reviews of mergers in digital markets including Uber/Autocab<sup>217</sup>, Google/Looker<sup>218</sup>, Salesforce/Tableau<sup>219</sup>, and Amazon/Deliveroo<sup>220</sup>. As highlighted in the updated Merger Assessment Guidelines<sup>221</sup> 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.

In June 2022, the CMA published the final report of its 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 CMA concluded that Apple and Google have an effective duopoly on mobile ecosystems that allows them to exercise a stranglehold over these markets. The CMA is currently consulting on a market investigation reference.<sup>222</sup> In January 2022, the CMA launched a 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. In the CMA's July 2022 update report setting out its initial findings, the CMA proposed not to make a market investigation reference. The market study is ongoing, and the CMA will publish its final report by January 2023.<sup>223</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**

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<sup>213</sup> Microsoft / Activision Blizzard merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>214</sup> Microsoft / Activision deal could lead to competition concerns - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>215</sup> Facebook, Inc./ Kustomer, Inc. - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>216</sup> Microsoft Corporation / Nuance Communications, Inc. merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>217</sup> Uber Technologies, Inc. / GPC Software Limited (Autocab) merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>218</sup> Google LLC / Looker Data Sciences, Inc merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>219</sup> Salesforce.com, Inc. / Tableau Software Inc merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>220</sup> Amazon / Deliveroo merger inquiry - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>221</sup> Merger Assessment Guidelines (CMA129) ([publishing.service.gov.uk](http://publishing.service.gov.uk))

<sup>222</sup> Mobile ecosystems market study - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>223</sup> Music and streaming market study - GOV.UK ([www.gov.uk](http://www.gov.uk))

**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 Analytics (DaTA) unit. Today, it comprises nearly 50 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 drafted substantial parts of the detailed requests for information, including requests for considerable data and details of Google and Amazon's algorithmic systems. 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's Behavioural Hub recently published two papers in April 2022 discussing Online Choice Architecture and how digital design can harm competition and consumers<sup>224</sup><sup>225</sup>, and in 2021 the DaTA unit published a paper on the impact of algorithms<sup>226</sup>. In addition, the unit contributed to the Digital Regulation Cooperation Forum's papers that explored the benefits and harms of algorithms<sup>227</sup> and the role of regulators in auditing algorithms<sup>228</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 DaTA unit has also

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<sup>224</sup> [Online Choice Architecture - How digital design can harm competition and consumers - discussion paper \(publishing.service.gov.uk\)](#)

<sup>225</sup> [Evidence Review of Online Choice Architecture and Consumer and Competition Harm \(publishing.service.gov.uk\)](#)

<sup>226</sup> [Algorithms: How they can reduce competition and harm consumers - GOV.UK \(www.gov.uk\)](#)

<sup>227</sup> [The benefits and harms of algorithms: a shared perspective from the four digital regulators \(publishing.service.gov.uk\)](#)

<sup>228</sup> [Auditing algorithms: the existing landscape, role of regulators and future outlook \(publishing.service.gov.uk\)](#)



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.

In June 2022, the CMA held its inaugural Data, Technology and Analytics Conference, 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.<sup>229</sup> The DaTA unit recently published a paper which discusses technology-led change in competition and consumer authorities driven by the formation of data and technology units and the hiring of technologists.<sup>230</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.**

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.

In relation to the first area, in April 2022, the government announced that it would take forward reforms to strengthen competition and consumer protection in the UK. 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 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.<sup>231</sup>

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<sup>229</sup> [CMA Data Conference – Bringing data, technology and analytics to competition and consumer protection](#)

<sup>230</sup> [The technology-led transformation of competition and consumer agencies: the CMA's experience - GOV.UK \(www.gov.uk\)](#)

<sup>231</sup> [Reforming competition and consumer policy: government response - GOV.UK \(www.gov.uk\)](#)

In relation to the second area, in May 2022, the government reaffirmed its intention to establish a pro-competition regime for digital markets.<sup>232</sup> This regime builds on the advice of the Digital Competition Expert Panel<sup>233</sup> and the CMA-led Digital Markets Taskforce<sup>234</sup>, which recommended the creation of a Digital Markets Unit (DMU) with the bespoke regulatory toolkit required to address the unique issues arising in digital markets. The DMU was established in the CMA in April 2021 and is currently operating in non-statutory form to prepare for the new regime.

In May 2022, the government set out in detail its intentions for the pro-competition regime.<sup>235</sup> It will apply to firms that the DMU designates 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. They are intended to prevent the designated firms from exploiting their market power and prevent harms before they occur. In addition to enforcing conduct requirements, the DMU will have the power to impose pro-competitive interventions on designated firms. Examples of pro-competitive interventions include requiring 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 reforms outlined above will require legislation. The UK government has announced that in the 2022-23 parliamentary session it will publish a draft Digital Markets, Competition and Consumer Bill, which incorporates both the broader reforms to the CMA's competition and consumer powers, as well as providing the DMU with the powers to enforce the new pro-competition regime.<sup>236</sup> The government will legislate as soon as parliamentary time allows.

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<sup>232</sup> [A new pro-competition regime for digital markets - government response to consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets)

<sup>233</sup> [Unlocking digital competition, Report of the Digital Competition Expert Panel - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/unlocking-digital-competition)

<sup>234</sup> [Advice of the Digital Markets Taskforce \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/digital-markets-taskforce)

<sup>235</sup> [A new pro-competition regime for digital markets - government response to consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets)

<sup>236</sup> [Queen's Speech 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/queen-s-speech-2022)

In the meantime, the DMU is undertaking a range of activities as part of preparing to implement the new regime. This includes evidence-gathering on digital markets, 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<sup>237</sup> and investigating the disclosure of paid for endorsements on social media platforms.<sup>238</sup> 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.<sup>239</sup>

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. 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 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>240</sup> As part of the CMA's work through the DRCF, the CMA recently published a joint statement with Ofcom setting out our shared views on the relationship between competition and online safety in digital markets.<sup>241</sup> The CMA has also published a joint statement with the Information Commissioner's Office on the relationship between competition and data

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<sup>237</sup> [CMA to investigate Amazon and Google over fake reviews - GOV.UK \(www.gov.uk\)](#)

<sup>238</sup> [Social Media Endorsements - GOV.UK \(www.gov.uk\)](#)

<sup>239</sup> [Online console video gaming - GOV.UK \(www.gov.uk\)](#)

<sup>240</sup> [Digital Regulation Cooperation Forum workplan 2022 to 2023 - GOV.UK \(www.gov.uk\)](#)

<sup>241</sup> [Online safety and competition in digital markets: a joint statement between the CMA and Ofcom - GOV.UK \(www.gov.uk\)](#)

protection<sup>242</sup>, and the two organisations continue to collaborate on the implementation and monitoring of Google’s Privacy Sandbox commitments<sup>243</sup>.

In May 2022 the CMA and Ofcom published their joint advice to government on how codes 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. This advice provides one example of how the pro-competition regime for digital markets could apply in practice.<sup>244</sup>

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<sup>242</sup> [Competition and data protection in digital markets joint statement \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>243</sup> [Investigation into Google’s ‘Privacy Sandbox’ browser changes - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>244</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)

## 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.**

Over the past year, the FTC has sought to identify through individual actions how the agency will approach enforcement in order to influence behavior across markets.

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, and much of the agency's enforcement resources have been dedicated to checking unlawful deals. In digital markets, the most prominent recent merger challenge is the FTC's August 2022 challenge of Meta's proposed acquisition of Within Unlimited, Inc., an independent virtual reality development studio that designed and built Supernatural, a popular app in the dedicated fitness virtual reality app market. The FTC alleges that the transaction seeks to expand Meta's virtual reality empire by attempting to illegally acquire a dedicated fitness app that proves the value of virtual reality to users. Meta is the largest provider of virtual reality devices, and also a leading provider of apps in the U.S. The complaint alleges that Meta is a potential entrant in the virtual reality dedicated fitness app market with the required resources and a reasonable probability of building its own virtual reality app to compete in the space. But instead of entering, it chose to try buying Supernatural. Meta's independent entry would increase consumer choice, increase innovation, spur additional competition to attract the best employees, and yield other competitive benefits. Meta's acquisition of Within, on the other hand, would eliminate the prospect of such entry, dampening future innovation and competitive rivalry. The complaint further alleges, inter alia, that the mere possibility of Meta's entry has likely influenced competition in the virtual reality dedicated fitness app market. If Meta is allowed to buy Within, that competitive pressure will slacken. That lessening of competition violates the antitrust laws, according to the FTC's complaint.

In the conduct area, the FTC is orienting its limited enforcement resources around targeting and rectifying root causes to avoid a whack-a-mole approach that imposes significant enforcement burden with few long-term benefits. As part of this strategy, 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. Dominant digital platforms have captured control over key arteries of commerce and communications, hoovering up data about every detail of citizen's lives. 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. Notably, this past year the FTC successfully amended its complaint against Facebook (d/b/a/ Meta) in a lawsuit that, 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 United States District Court for the District of Columbia.

The FTC also continues to litigate its case against Surescripts, an e-prescription giant. Filed in 2019, it was the federal government's first single firm conduct case against a digital platform since the Microsoft case nearly two decades before. 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 addition to individual enforcement actions, a significant portion of FTC's efforts and energy has been devoted to examining how the agency can better harness its tools to check unlawful deals and anticompetitive conduct. Among other initiatives, this includes launching a revision of the merger guidelines, preparing a policy statement on its unique Section 5 authority, initiating a rulemaking on commercial surveillance, as well other projects focused on a specific conduct or industry.<sup>245</sup>

In January, the FTC and DOJ launched a review of the U.S. merger guidelines, recognizing the need to approach merger review with a greater sense of humility when it comes to efficacy of predictive models and frameworks. Previous approaches missed too many transactions that ultimately harmed competition and spurred undue consolidation—contributing to markets now suffering from a lack of dynamism. A goal of paramount significance in preparing the guidelines is ensuring that the frameworks accurately reflect contemporary commercial realities. For example, the new guidelines are expected to

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<sup>245</sup> An example of a more specific recent policy initiative is the FTC's statement signaling its intent to ramp up law enforcement against repair restrictions that prevent small businesses, workers, and consumers from fixing their own products. Changes in technology and more prevalent use of software – greater digitization – has created fresh opportunities for companies to restrict repair markets. The FTC issued a policy statement to encourage reporting of violations of the Magnuson Moss Warranty Act, which prohibits tying a consumer's product warranty to the use of a specific service provider or product, unless the FTC has issued a waiver. Since issuing the statement, several large dominant tech firms have amended their repair policies. Press Release, Fed. Trade Comm'n, FTC to Ramp Up Law Enforcement Against Illegal Repair Restrictions, (Jul. 21, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions> .

address certain features of digital markets— including zero-price dynamics, the competitive significance of data, and the network externalities that can swiftly lead markets to tip.

The FTC is also examining ways to reinvigorate its unique authority under Section 5 of the Federal Trade Commission Act, a statute that allows the agency to prohibit unfair methods of competition that may fall outside the purview of the Sherman and Clayton Acts. The FTC is preparing a policy statement on Section 5 that reflects the legislative text, structure, the history of the statute, and the case law. The focus is to take unfairness seriously as a normative framework and 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, well prior to the existence of monopoly power, or even measurable effects, depending on the facts of the case, it is well suited to address digital markets.

In August, the FTC took its first step in initiating a rulemaking proceeding on commercial surveillance, announcing that the agency is exploring rules to crack down on harmful 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. The FTC’s August Advance Notice of Proposed Rulemaking seeks public comment on the harms stemming from commercial surveillance and explores whether new rules are needed to protect people’s privacy and information.

**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. For example, as part of the Commission’s prioritization of digital markets, in the last year the FTC onboarded more technologists to provide additional technological expertise to staff in cutting edge litigation, horizon-scanning efforts, and in pursuit of a robust research agenda.

An important tool in the FTC’s toolbox is the ability to compel production of documents, data, and testimony in conducting market studies. Recently, FTC staff studied unreported acquisitions by the five largest technology platform companies (by market capitalization) between January 1, 2010 and December 31, 2019, capturing a vast number of acquisitions

of start-ups, patent portfolios, and entire teams of technologists that were not required to be reported *ex ante* to the U.S. antitrust enforcement agencies. Key findings highlight the large number of transactions that were not reported in advance to the antitrust agencies, and the significant portion of transactions that involved firms that were less than five years old at the time they were acquired.

**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.**

#### Executive Order on Promoting Competition in the American Economy

As noted in the 2021 G7 Compendium, in July 2021 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, over the past year 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 related to digital markets, including, inter alia:

- a. A U.S. Treasury report on the state of labor market competition in the United States, finding that employer concentration and anticompetitive labor practices causes wage declines of roughly 20 percent for workers. The report also addresses concerns about misclassification of ‘gig workers’ as independent contractors, especially those working for ride-sharing companies.
- b. A Department of Commerce study of the mobile app ecosystem, highlighting concerns about the ability of app developers to obtain distribution on mobile devices.

#### Proposed U.S. Legislative Reforms

The United States Congress currently is considering 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, 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 is striving to ensure that its enforcement and policy actions function in a holistic, rather than siloed, manner. 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. For example, as alleged in the FTC’s amended complaint against Facebook, increased concentration in a market may lead to lower levels of service quality in areas such as privacy and data protection. In September, the FTC adopted a policy statement on enforcement related to gig work. The statement outlines both 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.

## 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, which seeks to restore competition in search and advertising markets, continues.<sup>246</sup> The Division filed the lawsuit in October 2020, and trial scheduled to begin in September 2023, with the District Court's decision expected at some point after that.

The Antitrust Division continues to pursue criminal charges for price fixing in online markets. In March 2022, a federal grand jury returned an indictment charging two individuals and four companies with participating in a conspiracy to fix prices of DVDs and Blu-Ray Discs sold on the Amazon Marketplace.<sup>247</sup> In January 2022, three sellers pleaded guilty to fixing prices of DVDs and Blu-Ray Discs sold on Amazon Marketplace.<sup>248</sup> In July 2021, another seller pleaded guilty to similar charges.<sup>249</sup>

### Merger Guidelines Review

The Antitrust Division, along with the Federal Trade Commission (FTC) has undertaken a review of the agencies' Merger Guidelines to reinvigorate enforcement against anticompetitive mergers, ensure the Merger Guidelines accurately reflect the U.S. case law, and ensure the agencies are approaching enforcement and remedies with an eye to deterrence.<sup>250</sup> The review is designed to incorporate recent learning into the Merger Guidelines and better account for certain features of digital markets, including zero-price dynamics, the competitive significance of data and the and the network externalities that can swiftly lead markets to tip in favor of a dominant player. Labor markets and non-horizontal mergers also are priorities for this review.

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<sup>246</sup> <https://www.justice.gov/atr/case/us-and-plaintiff-states-v-google-llc>.

<sup>247</sup> <https://www.justice.gov/opa/pr/two-individuals-and-four-companies-indicted-price-fixing-dvds-and-blu-ray-discs-sold-amazon>.

<sup>248</sup> <https://www.justice.gov/opa/pr/three-amazon-marketplace-sellers-plead-guilty-price-fixing-dvds-and-blu-ray-discs-ongoing>.

<sup>249</sup> <https://www.justice.gov/opa/pr/amazon-marketplace-seller-pleads-guilty-price-fixing-dvds-and-blu-ray-discs>.

<sup>250</sup> <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-look-to-strengthen-enforcement-against-illegal>.

In connection with the Merger Guidelines review, the Antitrust Division and the FTC conducted a series of listening sessions, one of which was held in May 2022 and focused on the effects of mergers and acquisitions in the tech sector, including the effects of acquisitions by digital platforms.<sup>251</sup> The listening session was intended to complement academic, legal, and economic perspectives on mergers and acquisitions, as well as the formal comment process that is informing the review, by soliciting input from a diverse group of stakeholders.

**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

The Division continues to engage in bilateral and multilateral discussions with other agencies and organizations to better understand digital markets. In 2021, it initiated a Technology Policy Competition Dialogue with the European Commission to discuss competition issues in digital markets.<sup>252</sup>

Gig Economy Labor Markets

The Division conducted a workshop in December 2021 on promoting competition in labor markets that touched on the relationship between antitrust law and collective bargaining in the gig economy.<sup>253</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 law enforcement community in

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<sup>251</sup> <https://www.ftc.gov/news-events/events/2022/05/ftc-justice-department-listening-forum-firsthand-effects-mergers-acquisitions-technology>

<sup>252</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>253</sup> <https://www.justice.gov/opa/pr/department-justice-antitrust-division-and-federal-trade-commission-hold-workshop-promoting>.

developing and using data analytics to identify signs of potential criminal collusion in government procurement data.<sup>254</sup>

#### Staff Hiring

The Division continues to seek to employ lawyers and economists with knowledge of digital markets. Dr. Susan Athey, a noted technology economist at Stanford University and former Chief Economist at Microsoft, has joined the Division as its Chief Economist.<sup>255</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, 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.

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. The letter, which represents the views of the entire Department, including the Antitrust Division, expressed concern about the rise of dominant platforms, and expressed the Department's belief that the legislation would enhance dynamism in digital markets.<sup>256</sup>

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<sup>254</sup> <https://www.justice.gov/atr/division-operations/division-update-spring-2021/pcsf-expansion-and-early-success>.

<sup>255</sup> <https://hai.stanford.edu/news/technology-economist-susan-athey-adds-doj-role-her-multidimensional-career>.

<sup>256</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).

## 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 agencies intended to “promptly tackle” pressing competition problems in the US economy. Among the concerns that it cites is that “a small number of dominant Internet platforms 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.” Identifying “Internet platform industries” as a market of special concern, the Order states 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 the 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>257</sup>

The Order recognizes the whole-of-government approach needed to urgently tackle unhealthy concentration and unfair methods of competition across the economy. Over the past year, the Antitrust Division has consulted with several executive branch agencies to issue reports on the competitiveness of certain sectors of the economy, including on a forthcoming report from the National Telecommunications and Information Administration on the state of competition in the mobile app ecosystem.<sup>258</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.**

The Division continues to consult 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, as when an agency reviews business conduct under a public interest standard that includes a competition component. 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.

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<sup>257</sup> [Executive Order on Promoting Competition in the American Economy | The White House.](#)

<sup>258</sup> [Executive Order on Promoting Competition in the American Economy | The White House](#), at 5(r)(iii).



## 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>259</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 2014 acquisition of WhatsApp<sup>260</sup>, Microsoft’s 2016 acquisition of LinkedIn<sup>261</sup>, Apple’s 2018 acquisition of Shazam<sup>262</sup>, Google’s 2020 acquisition of Fitbit<sup>263</sup>, and Meta’s 2020 acquisition of Kustomer<sup>264</sup>. 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, and (iii) access remedies, for example to APIs, thus ensuring access to inputs necessary to the continued provision of competing products of services.

The Commission has also adopted a high number of antitrust decisions in the digital sector, including on Intel<sup>265</sup> concerning a set of anticompetitive practices (rebates conditioned on exclusivity and naked restrictions) in the market for CPUs for Windows

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<sup>259</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0139>

<sup>260</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_1088](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_1088).

<sup>261</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_4284](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_4284)

<sup>262</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_5662](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5662)

<sup>263</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2484](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2484)

<sup>264</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_652](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_652)

<sup>265</sup> [https://ec.europa.eu/commission/presscorner/detail/fr/IP\\_09\\_745](https://ec.europa.eu/commission/presscorner/detail/fr/IP_09_745)

PCs and laptops, on Microsoft Internet Explorer<sup>266</sup>, on Samsung<sup>267</sup> and Motorola<sup>268</sup> respectively a commitments and a prohibition decision which both concern Standard Essential Patents (“SEPs”). More recently, the Commission also adopted several decisions notably on Google Shopping<sup>269</sup>, Qualcomm<sup>270</sup>, Android<sup>271</sup> and AdSense<sup>272</sup>. While the Qualcomm fine was annulled by the General Court of the European Union,<sup>273</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>274</sup>

The Commission is also still investigating several cases in the sector, notably Apple's App Store<sup>275</sup>, Apple Pay<sup>276</sup> and the Amazon cases of Amazon Marketplace and Amazon Buy Box<sup>277</sup>. The Commission is also investigating whether certain advertising practices by Google<sup>278</sup> and Facebook<sup>279</sup> were in breach of the abuse of dominance rules, as well as whether these two companies entered into an anticompetitive agreement in online display advertising.<sup>280</sup>

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>281</sup> Among the main findings, the report

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<sup>266</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_09\\_1941](https://ec.europa.eu/commission/presscorner/detail/en/IP_09_1941)

<sup>267</sup> [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39939](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39939)

<sup>268</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_489](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_489)

<sup>269</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_1784](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1784)

<sup>270</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_421](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_421)

<sup>271</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4581](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581)

<sup>272</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_1770](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1770)

<sup>273</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-06/cp220099en.pdf>

<sup>274</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-11/cp210197en.pdf>

<sup>275</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1073](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073)

<sup>276</sup> [https://ec.europa.eu/commission/presscorner/detail/es/ip\\_22\\_2764](https://ec.europa.eu/commission/presscorner/detail/es/ip_22_2764)

<sup>277</sup> See [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). Over the summer of 2022, the Commission market tested commitments offered by Amazon to address the competition concerns identified in the course of these respective investigations.

<sup>278</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3143](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3143)

<sup>279</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2848](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2848)

<sup>280</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1703](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1703)

<sup>281</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_402](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_402)



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>282</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>283</sup>

Importantly, 2022 saw the European co-legislators (European Parliament and Council) reach an agreement on the Digital Markets Act ("the DMA"), expected to enter into force in October of 2022. 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>284</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.

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<sup>282</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31997Y1209%2801%29>

<sup>283</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>284</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)

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 directly attached to the Deputy Director-General for Antitrust staffed with new professional profiles (such as Data scientist, Digital investigator, Intelligence analyst). These digital investigation skills enhance DG COMP's detection and prosecution capabilities to better tackle the companies' use of new technologies and data that may infringe competition law.

Moreover, the Commission is also putting 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, guidelines and reports. The enforcement of the DMA is estimated to require approximately 80 staff who would be redeployed internally, as appropriate. These staff would be called upon to effectively and competently enforce and ensure compliance with the rules and carry out a range of different regulatory tasks. In addition, the DMA also allows the Commission to draw on the expertise and assistance of Member States authorities and to appoint external experts.

In accordance with the requirements for a successful enforcement, the internal organisation will be based on the relevant expertise of all DGs and services involved, and ensure appropriate staffing of the relevant DGs and services.

**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.**

At the level of the European Union (and potentially the European Economic Area), on 24 March 2022 the EU co-legislators (European Parliament and Council) reached a political agreement to enact the Regulation "*on contestable and fair markets in the digital sector*", better known as the Digital Markets Act<sup>285</sup>. The text, which will likely enter into force in the October 2022, is based on a Commission proposal of December 2020,<sup>286</sup> and seeks to address the negative consequences arising from platforms acting as digital "gatekeepers".

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<sup>285</sup> <https://www.consilium.europa.eu/en/press/press-releases/2022/03/25/council-and-european-parliament-reach-agreement-on-the-digital-markets-act/>

<sup>286</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A842%3AFIN>

These are large companies operating “core platform services”, which have a significant impact on the internal market, serve as an important gateway for business users to reach their customers, and which enjoy, or will foreseeably enjoy, an entrenched and durable position. Once the Regulation enters into force, designated gatekeepers have to ensure compliance with the do’s and don’ts of the proposed Regulation within six months after one or more of the core platform services they provide have been identified as fulfilling the thresholds of the Regulation.

In order to identify the “gatekeepers” that will fall under the scope of the Regulation, the Digital Markets Act establishes three cumulative criteria. Each of those criteria is accompanied by quantitative criteria. If all of the quantitative thresholds are met, the company concerned is presumed to be a gatekeeper, unless it submits substantiated arguments to demonstrate the contrary. If not all of these quantitative thresholds are met, the Commission may 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.

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.

Importantly, 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>287</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>288</sup> The evaluation will cover the Commission’s procedural regulation in its entirety, while also focussing on the Commission’s investigative and enforcement powers, the procedural rights of parties to

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<sup>287</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4194](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4194)

<sup>288</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)

investigations and of third parties and the Commission's cooperation with national competition authorities and courts.

Moreover, in 2020 the Commission announced its intention to reappraise its approach to referrals under Article 22 of the EUMR and in March 2021 published specific guidance about it<sup>289</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

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<sup>289</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>

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 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 is a priority area for the ACCC for 2022-2023.<sup>290</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. Recently 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>291</sup>

The ACCC is proactively monitoring and investigating allegations of potentially anticompetitive conduct that may substantially lessen competition. The ACCC has publicly noted that this includes restrictions on third-party access, pre-installation and defaults, self-preferencing in relation to app marketplaces and allegations in relation to the

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<sup>290</sup> ACCC, [Compliance & enforcement policy & priorities 2022-2023](#).

<sup>291</sup> ACCC, [Google LLC to pay \\$60 million for misleading representations](#), 12 August 2022

advertising technology supply chain.<sup>292</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.

**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>293</sup> The ACCC published its final report for that inquiry in July 2019.<sup>294</sup> Subsequent to that, the Australian government accepted a recommendation in that report to establish a Digital Platforms Branch at the ACCC.

The ACCC's Digital Platforms Branch provides close scrutiny of digital markets. 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 Australia's Treasurer. Specifically, the Digital Platforms Branch is conducting the Digital Platforms Service Inquiry (2020-2025) under which it provides 6-monthly interim reports to the Treasurer.

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 advertising and the data practices of digital platform service providers and data brokers.<sup>295</sup> The first four interim reports of this inquiry focus on:

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<sup>292</sup> ACCC, [Digital platforms services inquiry - Discussion Paper for September 2022 interim report](#), 18 February 2022, pp 60-61.

<sup>293</sup> ACCC, [Digital platforms inquiry terms of reference](#), 4 December 2017.

<sup>294</sup> ACCC, [Digital platforms inquiry - final report](#), 26 July 2019.

<sup>295</sup> ACCC, [Digital platform services inquiry 2020-2025](#), 10 February 2020.

- a. online private messaging services in Australia (September 2020)<sup>296</sup>;
- b. online app marketplaces (March 2021)<sup>297</sup>;
- c. the provision of web browsers and general search services and in particular, the impact of default arrangements (September 2021)<sup>298</sup>; and
- d. general online retail marketplaces (March 2022)<sup>299</sup>.

The fifth report of this inquiry, which is due to the Minister by 30 September 2022, will explore the need for regulatory reform in Australia to address the competition and consumer concerns identified in digital platform services markets to date. On 28 February 2022 the ACCC issued a discussion paper on whether there is a need for new regulatory tools to address competition and consumer concerns regarding digital platform services.<sup>300</sup>

On 16 August 2022 the ACCC announced that its sixth report of this inquiry will examine competition and consumer issues in relation to social media services in Australia.<sup>301</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 its contact centre (a key source of data and intelligence that informs the agency's compliance 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.

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<sup>296</sup> ACCC, [Digital platform services inquiry – September 2020 interim report](#), 23 October 2020.

<sup>297</sup> ACCC, [Digital platform services inquiry – March 2021 interim report](#), 28 April 2021.

<sup>298</sup> ACCC, [Digital platform services inquiry – September 2021 interim report](#), 11 March 2021.

<sup>299</sup> ACCC, [Digital platform services inquiry – March 2022 interim report](#), 22 July 2021.

<sup>300</sup> ACCC, [Digital platforms services inquiry - Discussion Paper for September 2022 interim report](#), 28 February 2022.

<sup>301</sup> ACCC, [ACCC to examine competition and consumer concerns with social media](#), 16 August 2022



**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 is examining the need for regulatory reform in digital platforms services markets and may make recommendations in this regard. As noted above the Report will be provided to the Australian Government in September 2022.

Past national 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>302</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>303</sup> including with the Australian Media and Communications Authority (ACMA) and the Communications Department on an industry code of practice to counter disinformation online and improve news quality<sup>304</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>305</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

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<sup>302</sup> ACCC, [Consumer Data Right \(CDR\)](#), 9 May 2018.

<sup>303</sup> ACCC, [Digital platforms inquiry – final report](#) pages 30-38, June 2019.

<sup>304</sup> DIGI, [Australian code of practice on disinformation and misinformation](#), 22 February 2021.

<sup>305</sup> ACCC, [Consumer Data Right \(CDR\)](#), 9 May 2018.

the ACMA, OAIC, and Office of the eSafety Commissioner formed the Digital Platform Regulators Forum.

The purpose of the forum 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.

Following the establishment of the forum in March 2022, agency heads from all four forum agencies met on 28 June 2022 to agree a number of priorities for the coming year. These include the need for greater transparency, protecting users from harm, and capacity building between the four members.

## 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*.

Over last few years, CCI has directed investigations in digital markets some of which are mentioned here. A traders association brought a case against online platforms viz. Amazon/ Flipkart 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. Presently, the matter is under investigation.

CCI also initiated an investigation against Google in November, 2020 primarily in relation to three allegations, firstly, alleged pre-installation of Google Pay on Android smartphones resulting in a “status-quo bias” to the detriment of other apps facilitating payments through the Unified Payment Interface (UPI); secondly, mandatory use of Google Play Store’s payment system and Google Play In-App Billing system by the app developers for charging their users for purchase of apps on Play Store and/or for In-App purchases; and thirdly, excluding/discriminating against other mobile wallets/UPI apps as one of the effective payment options in the Google Play’s payment system. Presently, the matter is under investigation.

Taking note of various recent media reports, CCI took *suo motu* cognizance of the updation of privacy policy and terms of service by WhatsApp whereby the users have to accept the unilaterally dictated “take it or leave it” terms in their entirety. Further, users also have to accept mandatory sharing of their personalised data with Facebook, in a manner that is neither fully transparent nor based on voluntary and specific user consent. 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 creates further barriers to market entry besides leveraging. Presently, the matter is under investigation.

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. Presently, the matter is under investigation.

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 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. Presently, the matter is under investigation.

On the nonenforcement 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 has also undertaken 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, a Think Tank, consisting of academics (in the areas of law, economics and computer sciences), technologists and policy specialists has been set up. The idea is to dip into their expertise from time to time on all matters related to the digital markets.

Currently, CCI 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. The DMDU will *inter alia* facilitate cross-divisional exchange/discussions; connect with experts; engage with industry, academia, other regulators/ departments, international agencies; provide inputs on policy issues; support in data analytics/management; *etc.* The setting up of the DMDU will strengthen institutional capability within CCI, to effectively and efficiently identify, adjudicate and resolve competition problems in digital markets, through optimal use of enforcement and non-enforcement tools.

**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 1st October, 2018 to review the existing Competition law framework and make

recommendations to further strengthen the framework to inter alia meet new economy 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. These recommendations included 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 settlements and commitments. Recently, in August 2022, the Competition (Amendment) Bill, 2022 has been introduced in the Lok Sabha (the lower house of the Parliament of India).

The Government of India is also in the process of introducing a number of regulatory reforms to address issues in the digital space.

**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 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. 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 of South Africa (CCSA) uses various competition enforcement tools to resolve concerns in digital markets, including unilateral conduct enforcement, merger regulation, market inquiries and advocacy.

In November 2021, the CCSA referred [an abuse of dominance case against Facebook Inc.](#) (now Meta Platforms Inc) to the Competition Tribunal (Tribunal), for adjudication. The CCSA's investigation found that Facebook enforced unduly restrictive access terms and conditions to its WhatsApp platform, against GovChat. This was to remove GovChat's threat to Facebook's own social networking position and WhatsApp's monetisation strategies.

GovChat is a start-up online platform through which the South Africa government communicates with its citizens through mass push notifications on the WhatsApp platform. The GovChat platform also allows citizens to access information or services pertaining to various government services or programmes such as social grants, COVID19 services or to respond to surveys / polls to rate government services / performance. Thus, GovChat plays a very important role in the lives of South African citizens and is an important interface between the government and citizens.

The CCSA found that Facebook's conducts likely contravenes the following abuse of dominance provisions contained in section 8(1) of the Competition Act No. 89 of 1998 (as amended) –

- a. **refusal** to give a competitor access to an essential facility when economically feasible to do so (section 8(1)(b)).
- b. **engaging** in exclusionary conduct whose anticompetitive effect is not outweighed by any efficiencies or technological gains (section 8(c)).
- c. refusal **to** supply scarce goods or services to a competitor or customer when economically feasible to do so (section 8(1)(d)(ii)).

At the time of writing, the Tribunal had not yet allocated a hearing date for this matter.

## Market inquiries

In May 2021, the CCSA launched its online intermediation platforms market inquiry (the “Inquiry”). The Inquiry is focused on digital platforms in the 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 the ability of SMEs and/or historically disadvantaged firms to participate in the economy.

The Inquiry released its [provisional report](#) in July 2022 and aims to conclude its work by the end of 2022.

Amongst others, the Inquiry has provisionally found that Google Search plays an important role in directing consumers to the different platforms, and in this way shapes platform competition. The prevalence of paid search at the top of the search results page without adequate identifiers as advertising raises platform customer acquisition costs and favours large, often global, platforms. Preferential placement of their own specialist search units also distorts competition in Google’s favour. The Inquiry provisionally recommends that paid results are prominently labelled as advertising with borders and shading to be clearer to consumers and that the top of the page is reserved for organic, or natural, search results based on relevance only, uninfluenced by payments. The Inquiry further provisionally recommends that Google allows competitors to compete for prominence in a search by having their own specialist units and with no guaranteed positions for Google specialist units. The Inquiry is also exploring whether the default position of Google Search on mobile devices should end in South Africa.

In terms of competition amongst platforms, the Inquiry makes the following provisional findings and recommendations, amongst others:

- a. In software application stores, there is no effective competition for the fees charged to app developers with in-app payments, resulting in high fees and app prices. The Inquiry’s provisional recommendation is that apps should be able to steer consumers to external web-based payment options, or alternatively a maximum cap is placed on application store commission fees.
- b. Price parity clauses, evident in travel & accommodation, e-commerce and food delivery, hinder competition and create dependency, and the Inquiry therefore recommends their removal. Wide price parity clauses prevent businesses offering



lower prices on other platforms and narrow parity prevents businesses from offering lower prices on their own direct online channel.

- c. In property classifieds and food delivery, new entrants and local delivery platforms face challenges signing up large national businesses, undermining their ability to compete. The Inquiry provisionally finds in property classifieds this is a result of the investment and support of large estate agencies in Private Property and recommends the divestiture of their stake. Facilitating the interoperability of listings on the leading platforms is a further recommendation to support entrants. In food delivery, national restaurant chains often prevent franchisees listing on local delivery platforms and the Inquiry recommends this practice ceases along with any incentives provided by national delivery platforms to steer volumes their way.
- d. In food delivery, the Inquiry also finds that the business model of substantial eater promotions alongside high restaurant commission fees can result in large surcharges on menu items **which** is not transparent to consumers and distorts competition with local delivery options. The Inquiry provisionally recommends greater transparency on either the menu surcharge or the share taken by the delivery platforms.

In terms of competition amongst businesses on the platforms and consumer choice, the Inquiry makes the following provisional findings and recommendations, amongst others:

- a. Across all platforms there is a tendency to sell top ranking search positions to businesses which are not the most relevant to the consumer and constitute a form of advertising that is not transparent. This impacts on consumer choice and competition, especially for SMEs that cannot spend as much as large businesses. The Inquiry recommends that advertising is clearly displayed as such and that the top results are reserved for organic (or natural) search results.
- b. The Inquiry provisionally finds that the extreme levels of fee discrimination against SMEs in online classifieds, food delivery and to a lesser extent travel & accommodation, hinders their participation and has no coherent justification. The Inquiry provisionally recommends that a maximum cap is placed on the fee differentials between large and small businesses, potentially at 10-15%. In food delivery it is recommended that more equitable treatment also occurs in terms of marketing commitments made in exchange for lower commission fees.
- c. In e-commerce, the Inquiry provisionally finds that conflicts of interest arise in operating a marketplace for third party sellers and selling one's own retail products. This may result in self-preferencing conduct such as product gating,

retail buyers given access to seller data to target successful products, preferential display ads and promotions. The lack of a speedy resolution process also adds to the costs borne by sellers. The Inquiry provisionally recommends an internal structural separation of retail from the marketplace to implement equitable and competitively neutral processes.

- d. In software application stores, the Inquiry provisionally finds that South African applications (“Apps”) face challenges to their visibility due to competition from larger global App development companies. The Inquiry provisionally recommends that App stores provide country-specific curation of App recommendations and provide free promotional credits to South African App developers to enhance their visibility.

Regarding the participation by historically disadvantaged persons (HDPs), the Inquiry has provisionally found that the digital economy is far less inclusive to HDPs than many traditional industries. In addition, there are considerably more challenges faced by HDPs, especially as regards funding and support. These are as follows:

- a. For HDP digital entrepreneurs, general wealth inequality presents a hurdle to seed funding from close associates, and the venture capital industry offers little at this stage. Beyond seed funding, venture capital funds only seek out HDP entrepreneurs where those funds have an express mandate to that effect. Such mandates are rare beyond the SA SME Fund (a joint government and CEO initiative). The Inquiry provisionally recommends specific commitments on HDP mandates from private investors and for government to channel funds for HDP digital entrepreneurs through mandates to the venture capital sector along with requirements for transformation of the sector.
- b. A lack of assets and funding hinder HDP business’ ability to onboard and exploit the opportunities provided by digital platforms. The Inquiry’s provisional recommendation is that all leading platforms provide HDP businesses with personalised onboarding, a waiver on onboarding costs and fees, free promotional credits, fees that are no higher than the best placed, and the opportunity for consumers to discover HDP businesses on the platform.

#### 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. The next steps for the IFWG include dealing with customer data ownership and data standards and engaging with the information regulator, exposition of potential competition aspects related to open finance and how to mitigate anti competition behaviours. This showcases that the regulation of digital markets requires a multidisciplinary approach.

**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 has prioritised strengthening its institutional capacity in digital markets by targeting the training of investigators and economists in international courses and conferences to upgrade skills. However, the CCSA has used an active enforcement approach as the prime vehicle for deepening its understanding of these markets and to upgrade toolkits at the same time.

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 and provincial governments to understand the extent and format of tender information, the Commission has begun a process of designing algorithmic programmes to detect collusion. This has been greatly aided by engagements with other competition 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 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 aforementioned

jurisdictions recognize that these challenges necessitate 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.

The initiative has agreed to enhance strategic collaboration between the authorities by:

- (i) Scoping the conduct in digital markets, that has been the subject of investigation in other jurisdictions, on African consumers, businesses and economies with the purpose of fair regulation and enforcement in Africa (where applicable);
- (b) Researching the barriers to the emergence and expansion of African digital platforms and firms that may contribute to enhanced competition and inclusion in these markets for the benefit of African consumers and economies;
- (c) Cooperating in the assessment of global, continental, and regional mergers and acquisitions in digital markets, including harmonizing the notification framework; without prejudice to confidentiality commitments;
- (d) To share information in accordance with existing laws and applicable protocols; and
- (e) Sharing knowledge and build capacity to deal with digital markets.

As part of this initiative, a series of technical workshops are forthcoming in 2022 to commence the collaborative baseline research mapping the digital landscape in all participating countries. This research will assist in obtaining a deeper understanding of the extent of consumer adoption and emerging market structure across the main types of digital markets in a country. Country-specific factors across Africa will impact on the extent of adoption by consumers and the emergence of domestic digital firms alongside global ones.

The CCSA has continued its engagement with the European Union (EU) to provide an opportunity for mutual learning using 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 Dialogue has been extended and will examine issues of remedial action and data protection issues in a forthcoming workshop in 2022.

**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 Inquiry has provisionally identified the potential need for proactive regulations or guidelines in respect of a few categories of circumstances in addition to the remedial action proposed in the provisional report. First, to bring potentially new leading platforms within the ambit of the current proposed remedies that would be imposed on existing leading platforms. Second, to proactively prevent certain conduct in intermediation

platforms that are still maturing and where the conduct is likely to emerge in the future, but where there is clear potential for harm.

The provisional proposal for regulations or guidelines would cover the following areas:

- a. A process for the identification and review of leading platform status
- b. Prohibition of the following conduct which has an adverse effect on intermediation platform competition
  - (1) The use of price parity clauses (wide or narrow) or achievement of the same outcome through price quality factors in the SERP ranking algorithm;
  - (2) Restrictions or frictions on multi-homing by business users including exclusivity arrangements, interoperability limitations and multi-year contracting;
  - (3) Loyalty schemes that leverage the leading position of the platform, including visibility on the platform, to get business users to fund the scheme in whole or part.
- c. Prohibition of the following conduct which distorts competition amongst business users and/or results in their exploitation
  - (1) Self-preferencing conduct of any sort;
  - (2) Discrimination in listing, commission or promotional fees against SMEs/HDPs beyond a maximum cap;
  - (3) A lack of adequate transparency over promoted listings as advertising;
  - (4) The excessive sale of visibility through demoting organic results; and
  - (5) Permitting algorithm biases that favour one group or another.

**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.**

Work in the fintech area is being done through the IFWG as outlined above. The CCSA has also put together a workshop with the Information Regulator of South Africa to discuss the interface of the two agencies around data privacy and data access for competition.

## 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 KFTC has been closely monitoring unfair practices that solidify monopolies in digital platform markets, such as abuse of market dominance and anticompetitive mergers, and strictly enforcing laws against violations. In 2020, as a result of such efforts, the Commission carried out an investigation and took actions against Naver—one of the largest search engines in South Korea—as the firm gave preferential treatment to its own services at the search results pages by manipulating search algorithms and used exclusive dealing to prevent its online stores from doing business with competing platforms. The Commission also reviewed a merger between two food delivery app operators in that year, which led to the imposition of behavioral remedies to prevent harm to consumers and microbusiness owners along with structural remedies (e.g. divestiture). In 2021, the KFTC remedied Google’s unfair practices that restricted competition in the mobile OS market and other relevant app markets by blocking new entrants to the OS market. Also, it remedied five OTAs’ MFN clauses in contracts with accommodation providers in that year. This year, the KFTC has completed the investigations into self-preferencing of local mobility platforms and exclusive dealing of app market operators, and a hearing on these cases will begin.

### Non-Enforcement

As such, the Commission deals with and takes action against cases involving anticompetitive practices on one hand. It has also been analyzing and trying to improve structural factors in markets that limit competition in the online platform sector on the other hand. As part of such efforts, it embarked on a survey on the cloud market in 2022. As a core infrastructure of the digital economy, the cloud market is on a continuous rise, as remote work and the need for effective management of data have greatly increased since the pandemic. The market is highly concentrated with a few major players, which is growing concern about the market competition.

Against this backdrop, the KFTC will look into current status, market competition, anticompetitive practices and the need to improve relevant regulations. Another survey into overseas trends of app market legislation and regulation will also be conducted in late 2022. With regard to in-app payment issues in particular, the Commission will review whether the foreign authorities’ decisions and remedies produced meaningful improvement and seek ways to solve in-app payment issues in Korea. When it comes to competition advocacy,

the KFTC looked into five industries—mobility platform, media, automobile, distribution, finance—in 2021 to review digital transformation-led changes in competition and current status of relevant regulations. Also in 2022, studies into major digital markets including the IoT are underway. The Commission will particularly focus on how to improve interoperability between operating systems and smart devices and other relevant regulations so that it can give more momentum to market competition.

Along with these efforts, it has been encouraging self-regulation in the private sector to resolve various conflicts and disputes between platforms, online stores and customers. With its focus on unfair trade caused by uneven power dynamics between platforms and online stores and new types of consumer harm caused by online platforms, the Commission discusses self-regulation methods with market participants and support them by providing incentives. As an inter-ministerial consultative body launched in July 2022 with aims to promote self-regulation in the online platform sector, it is expected that relevant ministries and market participants will collaborate and come up with more detailed methods for self-regulation.

**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 reorganized its ICT taskforce into a ‘Digital Market Response Team’ in January, 2022 to strengthen law enforcement capabilities in the ICT sector. The Digital Market Response Team is like a virtual organization that uses the existing workforce. The previous ICT taskforce focused on imposing remedies for the abuse of a market dominant position of major platforms. But the new Digital Market Response Team focuses not only on monopoly issues, but also responds comprehensively to unfair trade practices of businesses taking advantage of an imbalance of power and new types of consumer harm. Meanwhile, the Digital Market Response Team is collaborating with external tech experts as well as internal staff members. In fact, the KFTC signed an MOU with research institutes and academia in 2021 to improve technological expertise in the ICT sector.

To keep up with the digital era, the KFTC has built and is operating a big data system to advance its own work processing system. The KFTC expects to improve market analysis and streamline its case handling procedures by integrating the KFTC’s case handling data with related agencies’ dispute resolution and consumer complaint data.

The KFTC launched a Digital Investigation & Analysis Division in September, 2017 after strengthening the organization, workforce, and tools to enhance investigation capabilities

of digital evidence. In particular, forensic experts of the Digital Investigation & Analysis Division are contributing to enhanced acquisition and analysis of digital evidence data by directly conducting on-site investigations and training KFTC employees.

**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 National Assembly is discussing to legislate the ‘Act on Fairness in Online Platform Intermediary Transaction (OPA).’ The OPA focuses on enhancing transparency and fairness of transactions in online platforms and promoting mutual cooperation between platforms and online stores. The KFTC is also preparing self-regulation for the private sector to address various issues arising from market participants, including platforms, online stores, and consumers, and to discuss plans to make improvements. We will look into the results of self-regulation during the legislative discussions of the OPA.

Meanwhile, the KFTC issued an administrative notice of the ‘Guidelines for Unilateral Conduct in Platform Markets’ in January, 2022. Rather than establishing new competition regulations, the Guidelines specify enforcement standards of competition law (Monopoly Regulation and Fair Trade Act), reflecting the characteristics of online platforms to enhance predictability of law enforcement and prevent law violations of businesses. The Guidelines explain the major characteristics of online platforms, such as network effects, economies of scale, and the importance of data and specify how to reflect these characteristics when defining markets and assessing dominance. In addition, the Guidelines specify the prevention of multi-homing, MFN clauses, self-preferencing, and tie in sales as the major types of law violations and seek to prevent businesses from violating laws. The Guidelines will be reviewed by stakeholders and related agencies to be confirmed and the KFTC aims to complete the legislation within this year.

**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.**

Digital platform work has increased for each agency due to the transition to the digital economy, so there is more need to collaborate and adjust work with other agencies.

Accordingly, the Korean government has launched inter-ministerial consultative body to deal with platform issues since July, 2022, bringing together relevant agencies, including the KFTC, the Ministry of Economy and Finance, the Ministry of Science and ICT, the Ministry of Employment and Labor, the Ministry of SMEs and Startups, the Korea



Communications Commission, and the Personal Information Protection Committee. This consultative body enables agencies to swiftly hold discussions on major platform issues to minimize unnecessary overlapping tasks and increase synergies between policies across government agencies. In particular, the consultative body will support self-regulatory measures for the private sector by communicating not only with relevant agencies but also with market participants in the private sector, such as platform operators, online stores, and consumers.