

Competition Policy for the Digital Era: EU Report Outlines Potential Shakeup for Big Tech

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On 4th April 2019, the academics appointed by Competition Commissioner Vestager returned their report on the question of how competition policy should evolve to continue to promote pro-consumer innovation in the digital age. Companies such as Google, Facebook and Amazon were all the subject of scrutiny from Professors Heike Schweitzer, Jacques Crémer and Yves-Alexandre de Montjoye, who were under instructions to consider whether the current enforcement tools available to regulators are sufficient to tackle the giants of the tech industry and to stimulate competition in digital markets.

The response from the report's authors is clear: regulators should be granted greater powers to tackle the issues posed by Big Tech and the increasing digitisation of our lives. The report emphasises the unprecedented and profound impact digitisation is having across economies, societies, access to information and ways of life. However, alongside the many associated benefits, there are significant anxieties about the concentration of power within a few organisations which have rapidly achieved seemingly unchallengeable positions of dominance.

In order to address these concerns, the report finds that regulators should look beyond the traditional measures of consumer harm and strict market definitions and instead seek to protect competition within platforms' ecosystems and, in some cases, make the abusive company repair the damaged market. Referring to the extensive investigation and analysis, along with discussions that have accompanied the intervention of the European Commission in cases such as Microsoft and Google Shopping, the report recognises that the current understanding of digital markets is noticeably developed. However, at the same time, those cases have demonstrated the need to modify methodologies, analytical tools and theories of harm to better fit the "new market reality".

A significant focus of the report is the issue of data and whether the current rules in place are fit for purpose. When discussing data, the report attempts to set out guidance as to how a well-functioning data market may be promoted, including pro-competitive cooperation in the field of data and the need to break up data bottlenecks. However, the report also suggests that enforcers could provide more guidance on data-pooling and that they may only be able to force a dominant company to give access to data where rivals are seeking to serve “complementary” markets or aftermarket within the dominant company’s ecosystem.

The shake-ups proposed by the report certainly make for interesting reading and many will be keeping a close eye on the extent to which the Commission decides to take up these suggestions.

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