



Factsheet

Dutch position on competition policy in relation to online platforms

Summary

Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) can also be applied in the digital economy. But to ensure effective enforcement, the guidelines must be amended so that competition authorities apply the best enforcement methods. In addition to existing competition policy, an authority at the EU level should also be able to impose ex ante measures on large platforms with a gatekeeper position. Finally, European merger control must be able to assess all relevant concentrations in the digital economy. This requires adjustments to the thresholds for reporting mergers.

The Netherlands' position

- 1. It should be made possible, (at least) at the European level, to impose ex ante obligations on large platforms with a gatekeeper role**, which have control over a competitive bottleneck such that consumers and businesses are left with little or no possibility to avoid them. It would make sense for this to be done on a case-by-case basis by an independent authority.
 - This competence would be supplementary to existing competition law, which only allows for ex post action if a specific practice leads to abuse of a dominant position. The additional measures would allow the authority to intervene before the abuse occurs.
 - In this way, specific action can be taken against those platforms that consumers and/or businesses are dependent on without disadvantaging the far larger number of smaller platforms and preventing them from competing properly and innovating.
 - Since the platforms to which the new competence will apply operate globally, the proposal is to implement it at the EU-level.
 - The requirements that an authority could impose on gatekeeper platforms include sharing specific data that is essential for businesses to compete, providing increased transparency, and treating services offered by other businesses the same as the platform's own services (non-discrimination).

- 2. The EU guidelines must be amended** so that they can be applied to the digital economy.

- Guidelines detail the methods competition authorities use when applying the competition rules. The current guidelines cannot always be applied effectively to the digital economy. The methods they detail do not, for example, take into account the role data plays or explain how to define markets when they are multi-sided or in which consumers do not pay a monetary price. Giving competition authorities guidance on such matters can prevent fragmentation of the application of competition law.
- It is not necessary to amend the rules laid down in the TFEU.

- 3. The European thresholds for reporting mergers to the European Commission must be adjusted.**

- Concentrations in the digital economy can in some cases escape merger control. This can happen in cases where data plays a major role or where the takeover is intended to eliminate a future rival. The reason such concentrations may go unnoticed is that the thresholds for reporting mergers to the European Commission are based on turnover, while the business being taken over often does not yet generate a very high turnover.
- It may, for example, be necessary to introduce additional merger thresholds, which factor in the ratio between the transaction value and the turnover. This would allow the Commission to investigate these mergers too. If a platform is willing to pay a large amount of money for a business that does not have very high turnover, this may be an indication that the business owns valuable data or poses a potential future threat to the platform's market dominance.
- Because the platforms in question are often large and operate throughout the EU, it is desirable for such concentrations to be investigated by the Commission.

Process

In order to establish the Netherlands' position on future-proofing competition policy in the digital economy, a discussion paper was presented for consultation between December 2018 and February 2019. During the same period talks were held with researchers, competition lawyers, platforms and representatives of businesses to fine-tune the conclusions of the consultation. The focus was on two questions. The first was to what extent existing competition law can be implemented in the digital economy. The second was to what extent ex ante rules are required in addition to competition law in order to ensure platform markets remain competitive.

Analysis

- Online platforms are characterised by several factors which can reinforce one another and lead to a winner-takes-all or winner-takes-most outcome:
 - **Direct and (positive) indirect network effects** imply that the more users a platform has, the more attractive it becomes to new users. Large platforms benefit from this.
 - **Data collection** can reinforce these network effects. After all, a platform with more users can collect more data and use that data to improve the platform's quality, thereby further increasing its competitive advantage.
 - **Economies of scale and scope** can make it more difficult to compete with an established dominant platform. Economies of scale can occur when high fixed costs are necessary to set up a platform, but the additional costs per new user are very low. This is often the case in online markets. Economies of scope or synergies can occur when datasets are combined to gain more new insights, which means platforms with access to lots of different data can offer a much higher quality than their smaller rivals.
- Since the largest platforms often provide not one service, but **an entire ecosystem**, in which the platform's own services are usually integrated more closely with each other than with competing services, users can become locked into one platform's ecosystem. Other strategies are also used to discourage users from switching platforms or multi-homing.
- The factors listed above can give the largest platforms a competitive advantage, but this does not necessarily mean they have permanent market dominance. The once mighty Myspace, for instance, was ousted by Facebook. However, the current major players have held their dominant positions for over 10 years now.
- The above factors are not equally relevant to all platforms either: platforms are highly heterogeneous and in many markets various platforms compete with each other. The reasons behind large platforms' dominance can also vary and as a result there is no single measure that could strengthen competition in all such markets.
- What is clear, however, is that it is sometimes virtually impossible for businesses and consumers to avoid the biggest players, usually when they control a competitive bottleneck. This further strengthens these players' position and increases the risk of their gaining permanent market dominance.