

Competition Policy Towards Digital Platforms

Emin Köksal*

Among the diverse public policy tools, competition policy is commonly considered as an effective instrument with which to deal with increasing dominance of digital platforms. Although current competition policies towards the digital platforms on both side of the Atlantic have been evolving, we have not yet seen an effective approach. It will only be possible to simultaneously maintain innovation incentives and curb market power in platform markets by adopting a new understanding in competition policy.

Introduction

While digital platforms have increased their influence on our daily lives, we have encountered new innovative services, but also faced unprecedented social and economic issues. Competition policy is commonly considered as an effective public policy tool to deal with these issues. Competition policy tools have been actively used in the European Union (EU) to deter anticompetitive behavior of the platforms. In the United States, meanwhile, the political salience of competition policy towards the digital platforms has increased progressively. In this paper, I will first summarise the current EU and US approaches towards the digital platforms, and then underline two challenging areas in which competition policy tools should be actively applied.

Current policies towards digital platforms

The scale of digital platforms and their global expansion has led to calls for more interventionist public policies. There are two main reasons for the rise of such a tendency. First, the share of the platforms in added value has increased at the expense of the entities that use these platforms to reach final consumers (Hortaçsu and Syverson 2015). As their share in the value-added process to decline, those entities call for public intervention to reverse it. Second, personal data retrieved by the platforms and its usage may potentially harm the competition in the market (Graef 2015). In parallel with their increasing share in added value, the platforms use the data to consolidate their market power. In many countries, these two concerns have led to debates about the need for a more rigid competition policy.

The most radical proposal has come from the US, where most of these platforms have originated, expressed most publicly by Elizabeth Warren, a potential Democratic presidential candidate. She has called for regulators to break up digital platforms such as Facebook, Amazon, and Google.

She has argued that reducing the scale of these platforms would give existing and potential competitors more opportunities to compete, which is more desirable in terms of a viable competition in the market. Moreover, Warren has suggested legislation that would prohibit the platforms from both offering a marketplace for commerce and participating in that marketplace (see Herndon 2019).

Although such a plan may seem fair at first sight, any intervention under a competition policy should be based on legal and economic foundations. In particular, such a structural intervention should be supported by economic facts, as well as legal justifications. On academic grounds, scholars like Lina Khan represent an academic base for those kinds of regulatory plans. In her influential article, Khan (2016) argued that the current antitrust framework is unequipped to capture the architecture of market power in the digital economy. Khan proposed two potential ways to address the power of digital platforms: (1) restoring traditional competition policy principles, or (2) applying ex-ante obligations for those platforms.

A look at recent practices in the US shows that the country's two antitrust enforcement agencies have already re-organised their workforces to deal with digital platforms. The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DoJ) agreed on a plan to divide regulation of four of the country's largest platforms. Under this plan, the FTC supervises Facebook and Amazon, while the DoJ handles Google and Apple (Kendall and McKinnon 2019). However, the approaches of the enforcement agencies are more modest than those of the politicians. As understood from their public explanations, they aim to maintain innovation incentives while curbing market power of the platforms (see McConnell 2019). Although neither the FTC nor the DoJ has opened any cases yet, the attorneys-general who represent the 50 states have recently started a competition probe into Google's activities in advertising and search businesses.

* Emin Köksal, associate professor, Department of Economics, Bahçeşehir University, Istanbul, Turkey, emin.koksal@eas.bau.edu.tr

On the other hand, in the EU, practice of competition policy has been beyond any political debate thanks to the European Commission's (EC) decisions in recent years (see Dionnet and Zacharodimos 2019). During the past few years, the EC has concluded investigations against Google, with record fines. In 2017 it fined the company 2.42 billion EUR for abusing its dominant position by favoring its shopping application compared to competing shopping services. In 2018, the EC fined Google 4.34 billion EUR after it found that the platform had engaged in anticompetitive practices to reinforce its dominant position in general internet searches via licensing its mobile operating system Android. Finally, in 2019, the EC fined the company 1.49 billion EUR for abusing its dominant position by imposing a number of restrictive clauses in contracts with third-party websites that prevented Google's rivals from placing their search advertisements on these websites.

Amazon is another digital platform that has been scrutinised by the EC. Although certain probes against Amazon have been terminated by the company's commitments concerning its problematic business practices, the EC is currently investigating Amazon's conduct in terms of its dual role as a platform for retailers and as a retailer itself. Apple is also targeted by the EC for similar conduct. The EC started to examine Apple's practices concerning its App Store following a complaint by music platform Spotify. The complaint claims that Apple is undermining Spotify's competitive position, among others, through its pricing policy.

Although there has not yet been any investigation into Facebook at the EC level, the German enforcer Federal Cartel Office (FCO) investigated Facebook and fined the company for its data collection and processing policy of its users. The enforcer decided that Facebook's data policy constitutes an abuse of dominant position on the social network market in the form of exploitative harm for consumers.

Towards a new understanding in competition policy

Considering the aforementioned issues, one could argue that competition policies on both sides of the Atlantic have been evolving to deal with the increasing dominance of the digital platforms. Although the direction of the evolution is still ambiguous, it is certain that the traditional reasoning set out in competition policy is no longer valid to analyse the dynamic nature of platform industries. As Nobel Laureate Jean Tirole⁽²⁰¹⁷⁾ has noted, the competition policy towards the platforms should review its software. Through adopting a new understanding and implementing better tools, innovation should be incentivised while curbing the market power of the platforms. Although there

are various issues concerning this software update, I will elaborate on two of them: concentration and data.

There are two main sources of the concentration in platform markets: network effects (both direct and indirect) and economies of scale (Tirole 2017). As the number of users of a platform increases, network effects initiate and create a feedback loop that makes this platform more attractive. Thereby, more users gradually tend to use the platform. In addition, platform businesses usually require large technological investment and only become feasible with a high number of users. Those two factors inherently create entry barriers and give rise to concentrated markets in which a single platform usually operates as a dominant player. Considering this fact, limiting the size of a platform or rigorously breaking up a platform seems infeasible in economic terms.

However, there are still two significant roles that the competition policy should play. First, entry barriers should be decreased to allow the flourish of new ideas as disruptive rivals (Bethell et al. 2019). For instance, decreasing the switching cost of users should play a significant role in that sense of encouraging potential rival platforms. If users can be on different platforms at the same time, or they can easily migrate to other platforms, then potential rivals find it easy to enter the market. Such an approach would not only allow new entrants but also keep the existing players more innovative (Federico et al. 2019). Through closely monitoring the existing platforms and market conditions, competition enforcers may explore more factors to eliminate that work as entry barriers. In order to decrease the monitoring costs, regulators may adopt more responsive complaint mechanisms.

Second, an active merger control policy should be adopted in order to curb the concentration in platform markets. Currently, a merger or an acquisition must be notified to the relevant competition authority if the target or purchaser company's turnover exceeds certain thresholds in money terms. Moreover, the examination becomes critical only if the two companies are in the same relevant market. However, in recent years most of the digital platforms have quickly expanded their businesses into diverse areas. For instance, Facebook acquired WhatsApp, a well-known messaging application, and Google acquired Nest, a smart home product producer. Most recently, Google planned to acquire Fitbit, a wearable technology producer. By acquiring a company in a different market, the platform directly becomes a significant player in that market. Moreover, the data acquired via the acquisition reinforces the purchasing platform's dominance in its core business. Therefore, an active merger policy equipped with new tools should be

adopted for an effective competition policy towards the platforms.

Thanks to internet-related digital technologies, it has become feasible to collect and process mass personal data for the first time in history. At every stage of our daily lives we produce personal data about our health condition, shopping behavior, etc. Digital platforms use this data to offer us more targeted, innovative products. In theory there is nothing wrong with this. However, from the competition policy perspective, data collected by a dominant platform may be part of exclusionary conduct to eliminate the threat of disruptive firms.

Having mass personal data enables platforms to offer innovative services and helps them gain competitive advantages. Based on this motivation, the platforms invest in data collection and processing technologies to innovate new services. Therefore, a rigid approach for data collection and processing may harm this innovative process. In this respect, competition policy should maintain those incentives and should not directly punish the platforms for their treatment of data. However, data owned by the incumbent platform may constitute an entry barrier for a potential rival (Tucker 2019). If a platform has a business strategy to exclude potential rivalry using data as an instrument, then an intervention should be required unless this practice does not have any economic justification.

Conclusion

The above analysis clearly shows that competition policy needs an evolution to deal with the increasing dominance of the digital platforms. However, radical remedies like breaking up the platforms are not compatible with the nature of platform markets. Nonetheless, constantly fining the platforms for their wrong doings is not an effective way to ensure competition, unless it is applied as a part of a new approach. Maintaining innovation incentives and curbing market power at the same time in platform markets can only be achieved through adopting a new understanding in competition policy.

References

- Bethell, O. J., Baird, G. N., and Waksman, A. M. (2019), 'Ensuring innovation through participative antitrust', *Journal of Antitrust Enforcement*, Article in Press: 1–26.
- Dionnet, S., and Zacharodimos, G. (2019, August), 'Digital markets: recent competition law developments in the EU', <<https://www.financierworldwide.com/digital-markets-recent-competition-law-developments-in-the-eu#.XcquYS2B0Wo>>, accessed 10 November 2019.
- Federico, G., Morton, F. S., and Shapiro, C. (2019), 'Antitrust and Innovation: Welcoming and Protecting Disruption', *NBER Working Paper*, 26005.
- Graef, I. (2015), 'Market Definition and Market Power in Data: The Case of Online Platforms', *World Competition*, 38 (4): 473–505.
- Herndon, A. W. (2019, March 8), 'Elizabeth Warren Proposes Breaking Up Tech Giants Like Amazon and Facebook', *The New York Times*, <<https://www.nytimes.com/2019/03/08/us/politics/elizabeth-warren-amazon.html?module=inline>>, accessed 10 November 2019.
- Hortaçsu, A., and Syverson, C. (2015), 'The Ongoing Evolution of US Retail: A Format Tug-of-War', *Journal of Economic Perspectives*, 29 (4): 89–112.
- Kendall, B., and McKinnon, J. D. (2019, June 3), 'Congress, Enforcement Agencies Target Tech', *The Wall Street Journal*, <https://www.wsj.com/articles/ftc-to-examine-how-facebook-s-practices-affect-digital-competition-11559576731?mod=article_inline>, accessed 10 November 2019.
- Khan, L. M. (2016) 'Amazon's Antitrust Paradox Amazon's Antitrust Paradox', *Yale Law Journal*, 126 (3): 710–805.
- McConnell, C. (2019, March 6), 'US DOJ view of digital platforms guided by Trinko', *Global Competition Review*. <<https://globalcompetitionreview.com/article/1189234/us-doj-view-of-digital-platforms-guided-by-trinko>>, accessed 10 November 2019.
- Tirole, J. (2017), *Economics for the Common Good*. (Princeton University Press).
- Tucker, C. (2019), 'Digital Data, Platforms and the Usual [Antitrust] Suspects: Network Effects, Switching Costs, Essential Facility', *Review of Industrial Organization*, 54 (4): 683–694.