



# Using Market Studies to Tackle Emerging Competition Issues





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# Foreword

The debate on how to use and adjust competition policy frameworks and tools continues to evolve as competition authorities gain experience in a changing world. This experience has shown that challenges to effective competition do not come solely from anti-competitive behaviour and merger strategies. Market studies are a flexible tool for competition authorities to examine such challenges outside the context of merger reviews or antitrust investigations.

Competition authorities are currently facing structural emerging competition issues from the increased digitalisation of markets and the use of other new technologies. The structural features of these markets can lead to increase concentration, even if short of individual market power. Novel demand-side issues have also risen, for example, with the greater use of big data in ways that competition authorities cannot address through competition enforcement alone. Competition authorities are also facing regulatory emerging competition issues as the need to keep regulations up to date becomes even more important as markets undergo significant change. Over the longer-term, structural and regulatory competition issues might emerge post-Covid as the competitive landscape is likely to change relative to what it was before.

These changes present new and evolving challenges. Market studies can play a key preventive role in identifying and diagnosing emerging competition issues by exploring the different drivers and clarifying the options available to tackle them from a competition policy, enforcement, regulatory, or other policy perspective. As a result, market studies can initiate solutions to mitigate consumer harm before it becomes significant, promote further competition, and reduce the likelihood of (or opportunities) for violations of competition rules.

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# 1 Introduction

Market studies<sup>1</sup> are a flexible tool for competition authorities to examine broader competition issues in a market or sector, outside the context of merger reviews or antitrust investigations. According to the OECD “Market studies assess whether competition in a market is working effectively and identify measures to address any issues that are identified. The most common market study outcomes are recommendations for regulatory changes, calls for firms to change their behaviour, or law enforcement interventions” (OECD, 2018<sup>[1]</sup>)

Nearly all competition authorities in the OECD use market studies in some form in their work, ranging from short, informal assessments to lengthy, formal processes involving multiple rounds of stakeholder input and empirical analysis. The variation in legal frameworks, which differ across jurisdictions, partly explains this range in the depth and formality of market studies. Nevertheless, commonalities exist, for example, most competition authorities have some type of power to conduct market studies and this power is usually explicit (OECD, 2016<sup>[2]</sup>).

The objectives of market studies are also broad and vary across jurisdictions. The most common are: competition advocacy; enhancement of a competition authority’s knowledge of a specific sector, and support a competition authority’s enforcement efforts when evidence is uncovered that leads to opening an investigation (OECD, 2016<sup>[2]</sup>).

In this paper, the focus is on the use of market studies with the specific objective of addressing emerging competition issues. The paper aims to contribute to the debate on how best to use and adjust the existing competition policy framework and tools to better deliver benefits to society in a changing world.

In doing so, the paper aims to look beyond enforcement tools. Competition authorities experience in both antitrust and merger cases in various industries has shown that challenges to effective competition do not come solely from anti-competitive behaviour or merger strategies.

For example, when markets are characterised by high or discriminatory prices or poor quality it may well be that the cause is not anticompetitive conduct by incumbents, or agreements between firms, but instead market features such as concentration, high barriers to entry, behavioural biases that lead to consumer lock-in, network effects, anticompetitive regulation, or distortions of competitive neutrality.

Having the tools to investigate and where possible remedy such features is particularly important in the current context of increasing concerns over the trend towards greater concentration and profitability in many markets around the world (OECD, 2018<sup>[3]</sup>).

Therefore, to explore the role that market studies can play in this context, this paper discusses in **Section 2** what emerging competition issues are, and the different types of emerging issues competition authorities have faced or are currently facing. **Section 3** presents market studies as an ex-ante tool for tackling emerging competition issues. It discusses when market studies might be an effective tool, and reviews the strengths and limitations of this tool when applied to emerging competition issues. **Section 4** describes the strategic considerations competition authorities might take into account when deciding whether or not to use the market study tool to tackle emerging issues. Finally, **Section 5** concludes that market studies

can play a key preventive role in identifying and diagnosing emerging competition issues by exploring the different drivers and clarifying the options available to tackle them from a competition policy, competition enforcement, regulatory, or other policy perspective. As a result, market studies can initiate solutions to mitigate consumer harm before it becomes significant, promote further competition, and reduce the likelihood of (or opportunities for) violation of competition rules.

# 2 Emerging competition issues

## What are emerging competition issues?

Emerging competition issues (or risks to competition) can be described as scenarios where certain new market characteristics, changes in the conduct of the companies operating in the markets concerned or in the behaviour of consumers, new public sector interventions in markets (whether by way of policy or regulation, or direct participation in the supply and demand side of markets) create a threat to competition.

Emerging competition issues therefore arise when a market is subject to change. The change might be due to technological innovations, public policy interventions, exogenous shocks, or a combination of these. The changes tend to present new and evolving challenges. As a result, competition authorities are unlikely to have sufficient enforcement or international experience to understand the potential competition concerns that could arise, and to determine the appropriate course of actions to address them should they start to materialise.

An important dimension when considering emerging issues is time. In this respect, three scenarios could be conceived:

- **Scenario 1: a threat to competition *hypothesised to happen in the future because of the risk of future market features*.** For example, the UK Financial Conduct Authority (FCA), as part of its Strategic Review of Retail Banking Business Models (FCA, 2018<sup>[4]</sup>), analysed scenarios of how retail banking business models could evolve in the foreseeable future (0-5 years out). The purpose was to identify potential consumer and competition concerns that may require monitoring by the regulator. Similarly, the FCA's Credit Information Market Study (FCA, 2019<sup>[5]</sup>) included in its scope the analysis of how this market may evolve in the future as a result of Open Banking.

The strategic benefit for the authority was to have advanced notice of potential competition and consumer protection problems, and to be on the front foot to act should these start to materialise in markets of importance for the economy such as retail banking.

- **Scenario 2: a threat to competition *hypothesised to happen in the future because of existing market features*.** For example, in relation to how the increase use of big data and algorithms might facilitate tacit collusion, the European Commission used its E-Commerce Sector Inquiry (EU, 2017<sup>[6]</sup>) to analyse possible competition threats from automatic software programmes that adjust their own prices based on the observed prices of competitors. The inquiry identified that the wide scale use of such software might raise competition concerns in some situations, depending on market conditions.

The strategic benefit of the investigation was to identify the conditions that may give rise to such competition concerns in order to enable timelier action should the use of these software programmes become widespread.

- **Scenario 3: a threat to competition *already starting to happen because of existing market features that is at risk of becoming more significant in the future*.** For example, the rapid growth of digital markets in recent years has significantly transformed their characteristics and

competitive dynamics. As a result, many competition authorities have carried out advocacy initiatives including market studies to obtain a better understanding of the competition issues arising and to address them where feasible (see the International Competition Network (ICN, 2019<sup>[7]</sup>) for a review of ICN members' recent experiences in conducting competition advocacy in digital markets).

The strategic benefit was to obtain a good understanding of the competition issues arising in these evolving markets, to advocate for changes in regulatory frameworks where needed, and to inform potential future enforcement or merger cases.

Arguably, a fourth scenario could also be conceived as constituting an emerging issue:

- **Scenario 4: a new form of competition harm is emerging in existing markets.** For example, the US Federal Trade Commission's (US FTC, 2016<sup>[8]</sup>) study of pattern assertion entities (PAEs) sought to bring to light a relatively unknown sector, by exploring and categorising these entities' business model and behaviours. The study led to recommendations to facilitate the benefits of patent rights, while minimizing practices that could discourage innovation, prevent competition, and raise prices through unnecessary litigation and licensing.

Tackling emerging competition issues is not new for competition authorities. Markets have been subject to change through history. For example, competition authorities dealt with the emerging competition issues that arose following the 2008 financial crisis; they have been dealing with emerging issues from the increased digitalisation of markets; and more recently from those arising from the Covid-19 crisis in the short term. Over the longer term, new threats to competition may arise as the competitive landscape changes post-Covid-19.

One of the main differences in relation to tackling emerging competition issues today stems from an increasingly fast pace of change in many markets and therefore, the pressure on competition authorities to act quickly while remaining rigorous in their actions.

## Types of emerging competition issues

When competition works well, it drives productivity and growth in an economy. It incentivises firms to innovate and rewards the most efficient. Confident, informed consumers drive competition by making informed purchasing decisions. Competition benefits consumers by providing greater choice, better quality products and services, and keeps prices down.

In looking to identify markets where competition issues may arise, or where competition could be improved, authorities take into consideration underlying features of markets that may harm competition.

The types of emerging issues competition authorities have faced (or are currently facing) can therefore be categorised in terms of their drivers: changes to the structural characteristics of a market or sector, new demand-side issues, out of date (or new) regulatory frameworks, and new public policy initiatives with the potential to change market dynamics. We discuss them in turn.

### **Structural issues**

Even if short of individual market power, structural characteristics such as large economies of scale and scope, strong network effects, high barriers to entry, and "winner-takes-most" dynamics amongst others can lead to increasingly concentrated markets. And, although concentration per se is not necessarily harmful to consumers<sup>2</sup>, competition risks can arise. It can allow companies to monitor behaviour of their competitors and create incentives to compete less vigorously without any direct coordination. In certain

situations, it can be a side effect of durable market power that insulates firms from competition (although concentration is not on its own proof that this is the case).

The increased digitalisation of markets and their platforms business models has given rise to structural characteristics that drive highly concentrated markets. Competition authorities have used market studies to explore the structural competition issues arising. For example in 2017, the Netherlands Authority for Consumers and Markets (ACM, 2017<sup>[9]</sup>) conducted a market study into online video streaming. The study showed the complexities of a fast moving multi-sided market. Online video platforms compete heavily for consumers' attention. While the study found that, none of the online video platforms had a dominant position in online advertisement at the time of the study, it revealed a dynamic market where one player had a certain degree of market power, and explored scenarios in which potential problems could arise in the future.

### Box 1. Market study into “online platforms that stream videos”

#### Netherland Authority for Consumers and Markets (ACM)

This market study on online video streaming focused on what anticompetitive risks existed in this market. In order to investigate these, the ACM looked not just at the platforms themselves, but also at the firms that were connected to them, such as media agencies, digital market places where advertisement space is bought and sold, and producers of video content (i.e. the ecosystem). The study identified three scenarios in which anticompetitive risks could occur:

- Scenario 1: the collection of consumer data by online video platforms leads to market power (and the potential abuse thereof).
- Scenario 2: market distortions occurs because a video platform bundles advertising space with its own technology to market this advertising space. An example of market distortion is the exclusion of competitors.
- Scenario 3: publishers are highly dependent on a large market participant for their reach and revenues.

The study did not find anticompetitive problems in the market that could be related to the three investigated scenarios. There was sufficient competition between market participants, and the market was sufficiently dynamic. However, the likelihood of anticompetitive problems and the impact thereof were strongly related to further market developments. As a result the competition authority concluded to keep a critical eye on such developments in the following years.

Source: (ACM, 2017<sup>[9]</sup>)

Another example is the Australian Competition and Consumer Commission Digital Platforms Inquiry (ACCC, 2019<sup>[10]</sup>). This inquiry considered the current and likely future impact of online search engines, social media and digital content aggregators on competition in the media and advertising services markets. The breadth of the inquiry enabled the ACCC to consider linkages between substantial market power by Google and Facebook, consumer protection and privacy issues from the user data collected by these firms. As a result, the objective of the recommendations resulting from the study was to put in place regulatory frameworks that took into account these overlapping issues to enable adverse consequences to be addressed and reduce the likelihood of new issues arising in a cohesive way given the structure of the market.

More recently, the European Commission announced the launch of a sector inquiry into the market for consumer products and services linked to the Internet of Things (IoT) (EU, 2020<sup>[11]</sup>). The sector enquiry is likely to cover any consumer facing system connecting physical or virtual objects to other objects or the internet. This includes smart home appliances and wearables (e.g. fitness trackers or smart watches).

Despite the relatively early stage of development of this sector in the European Union, there are indicators that certain company practices may structurally distort competition. Voice assistants are also a new interface between consumers and products/services, and there is a question as to how choices are presented to consumers over this medium. The Commission is concerned that producers of devices and assistants can collect vast amounts of data, and that firms could then misuse this data to cement their market power, or otherwise harm competition to the detriment of consumers, through e.g. self-preferencing (directing users to their own products), or exclusive deals (sending consumers to preferred partners and limiting choice).

Beyond the emerging competition issues arising in the online environment, other type of “challenger” businesses, innovative business models and new technologies also have the potential to disrupt markets and, in some cases, to bring about fundamental change to supply chains (for example, advanced robotics and developments in the automotive sector). They offer increased choice, innovation and potentially lower prices to consumers. However, they may also face anticompetitive barriers to their establishment and give rise to new competition risks.

Lastly, a very topical issue is how the competitive landscape is likely to change relative to what it was before the Covid-crisis in the longer-term. There is an on-going debate on how structural features could be affected. One concern is that there could be an increase in market concentration in those markets more severely hit during the crisis such as retail, air travel and air manufacturing, travel services, hotels, etc. In those sectors, if a large number of firms exited because they are unable to withstand the falls in demand or liquidity, then this could lead to an increase in concentration in these markets. Market studies can determine the drivers and the resulting changes in the competitive dynamics in these markets, and identify possible actions where needed.

### ***Demand-side issues***

Well-functioning markets also require an effective demand-side. Markets where consumers face new barriers to accessing relevant information on price or quality, to switching, to searching or to comparing between suppliers, or understanding the choices on offer, could potentially allow companies to increase prices or reduce quality more than they otherwise would.

Consumer decision-making is also not fully rational, and may be limited by factors such as the time consumers have available to make decisions and consumers’ ability to process the information. Consumers can also be influenced by how things are presented and tend to be poor at predicting the future. In technical terms, consumers exhibit behavioural biases. Concerns may arise where firms exploit such biases to encourage consumers to take decisions that may not be in their best interests (OECD, 2018<sub>[12]</sub>).

Decision-making can also be affected by complexity. Consumers can be negatively influenced by complex tariff structures, complex, confusing or misleading pricing practices and special offers; lengthy, unclear or hidden contractual terms; advertisement techniques that create false focal points for consumers; and products packaged into complex bundles.

One example of a new business model exploiting consumers’ behavioural biases arose with the development of the low-cost carriers’ (LCC) business model in the airline industry. One of the practices of these type of airlines was pre-selection of “opt-out” services when selling airline tickets to customers online. Items that airlines had preselected during the online booking process, at added costs to the flight, included baggage, seat selection and travel insurance. Following a consumer protection investigation, New Zealand’s Commerce Commission found this practice to be misleading customers as to the price of the flight and the services they were actually buying, often leading them to purchase something they did not intend to. The Commission secured undertakings from a number of airlines to end this practice (CCNZ, 2015, p. 19<sub>[12]</sub>).

Another example refers to the novel demand-side issues that have risen with the greater use of big data, allowing business to collect personal data. These kinds of demand-side issues affect market competition in ways that competition authorities cannot address through competition enforcement alone. For instance, these markets are characterised by substantial information asymmetries between consumers and providers about how the consumer data is being used. Complexity in the terms and conditions can be a strategy used by companies to disempower consumers. Consumers often do not read them or find difficult to understand the extent of data they are sharing and how these are being used.

The growth of business models in which products are offered at zero price also presents novel challenges relating to behavioural biases. Receiving the product free can lead consumers not to focus on the quality of the services provided. This may be reflective of optimism bias and limited information. Another relevant behavioural bias is that while consumers tend to express significant concerns about privacy, and rate it as important, they tend not to make product decisions taking account of privacy (OECD, 2018<sup>[13]</sup>).

The Italian Competition Authority, the Data Protection Authority, and the Communication Authority carried out a joint Sector Inquiry on Big Data (2020<sup>[14]</sup>), where the above demand-side issues were part of the scope. The inquiry covered the sectors of telecommunications, media, digital platforms, insurance and banking. Based on a consumer survey carried out during the inquiry, its analysis found consumers cannot easily evaluate how data usage would affect the value they obtain from a service. One of the areas highlighted in the inquiry was how reducing information asymmetries between users and providers during the data collection face should be a key policy aim, and that data protection laws and consumer protection tools could achieve a significant impact on reducing this asymmetry.

### Box 2. Sector Inquiry on Big Data

#### The Italian Competition Authority, the Data Protection Authority, and the Communication Authority

As part of the study, the relationship between the use of personal data and competition was analysed. Collecting and using personal data are of interest from the perspective of competition law to the extent that the data are “economic goods” able to generate revenue. Where a service is provided by the company “free of charge”, personal data are, in fact, the main if not the only value exchanged for the service itself. The ability to decide the degree to which the use of personal data is a component of the price or quality of a service assumes that (I) users are aware that they are providing their personal data, and that (II) users are aware of the economic value of their personal data. Such an awareness does not, however, appear to be so obvious, as the results of the consumer survey conducted during the study showed.

The study emphasises the effectiveness of consumer protection tools against messaging service providers (forcing the user to accept new terms of service) and social media networks (not providing clear and accurate information on the commercial purposes for which data are collected). The enforcement of consumer protection rules do not only provide direct protection for consumers, but also assume a pro-competition role to the extent that users are put in a position to (more) consciously and actively exercise their consumer choices. As a result, the study made the recommendation to reduce information asymmetries between digital corporations/platforms and their users (consumers and firms), where data and consumer protection tools could achieve a significant impact.

Source: (The Italian Competition Authority, the Data Protection Authority, and the Communication Authority, 2020<sup>[13]</sup>)

### **Regulatory and public policy issues**

When markets undergo significant change, the need to keep regulations up to date becomes even more important. They present a two-fold challenge. On the one hand, there is the issue of whether existing

regulation is hindering the promotions of competition, entrepreneurship and innovation. On the other hand, there is a question of whether or not existing regulation remains appropriate to address new issues.

For example, the market study on the financial sector by the Mexican Competition Authority (COFECE, 2014<sup>[14]</sup>) played a key role in the development of the sector and Mexico's legal financial reform. The study analysed the state of competition in the financial system and its markets. The study warned that consumers had few options to access better quality products and services, as a consequence of the low competitive pressure that existed in the sector. Recommendations were thus made to encourage competition and to reduce the restrictions that prevented access for other participants. Moreover, with the entry of financial technology (fintech) institutions, the market study also provided the basis for COFECE's opinion to the Congress legislative committees responsible for drafting the legislation to regulate fintech institution (COFECE, 2017<sup>[15]</sup>). Several other jurisdictions also carried out market studies in relation to the application of new technologies to the financial sector such as Spain (CNMC, 2018<sup>[16]</sup>) and Portugal (AdC, 2018<sup>[17]</sup>) and made recommendations to their respective regulatory frameworks.

### Box 3. Market study on the financial sector

#### Comisión Federal de Competencia Económica (COFECE)

In 2014, COFECE issued a market study and recommendations regarding competition conditions in the financial sector and its markets. The study identified that, in Mexico, despite a well-capitalized financial system and low late-payment rates:

- users display low mobility and financial intermediaries did not have sufficient incentives to attract customers through quality, innovation and lower prices;
- there was a high concentration of suppliers in some products and services, as well as high bank profitability, surpassing that observed in countries with similar income levels;
- both the penetration levels of the financial system and the inclusion of the population remained low; and
- financial intermediation levels also remained low, which explained why Mexico was among the countries where least credit was granted.

The study found that the structure, performance and competition levels in the financial sector could be modified with the introduction of new technologies that reduce costs and increase the productivity of the sector. After this study was published, Fintech, through innovative business models and the use of digital platforms, created new means for the provision of different financial services.

Conducting the market study on financial market together with advocacy initiatives to understand the competition issues arising from the digital economy enabled COFECE to face the challenge of advancing procompetitive regulatory frameworks in a fast-changing market. The authority balanced protection of consumers and the stability of the financial system with the promotion of innovation and development of Fintech.

In March 2018, Mexico's Fintech Law was published in the Official Gazette. Among COFECE's recommendations adopted by the Mexican Fintech Law were: (i) explicitly recognizing financial information is the users' property; and (ii) Fintech's access to users' information under control of traditional financial entities should be facilitated through non-discriminatory fees and conditions established by financial authorities. Fintech was considered to now have greater possibilities to assess the risk level of each potential consumer and generate products that respond to their needs, presenting themselves as an option different from traditional banking.

Source: (COFECE, 2017<sup>[15]</sup>)



Regulation can also create an uneven level playing field between different types of companies operating in the same market. For example the Brazil Competition Authority studied the markets of paid passenger transportation and the disruptive effects of innovations, in particular the entry of Uber, addressed some market failures in the sector and identified that certain regulations regarding taxi services had become unnecessary (CADE, 2018<sup>[18]</sup>). Regulations can also create an uneven playing field by increasing barriers to foreign entry, or alternatively grant undue advantages to foreign companies by their governments.

In addition to regulatory frameworks, forthcoming public policy initiatives also have the potential to change market dynamics. For instance, this could arise from the increase in policy initiatives as countries are called to strengthen their commitment to the United Nations Sustainable Development Goals (UN, 2015<sup>[19]</sup>). Several competition authorities have included a focus on sustainability in their published strategies for 2020-21 such as the French Competition Authority (2020<sup>[20]</sup>) on sustainable development or the UK Competition Authority on climate change (CMA, 2020<sup>[21]</sup>).

A recent example in this area, is the launch in July 2020 by the German Competition Authority of a study on the e-mobility sector (2020<sup>[22]</sup>). The study aims to examine the market for electronic vehicle charging stations ahead of a government plan to boost the sector. In this early market phase, the competition authority wants to identify competition problems in the supply of charging infrastructure for electric vehicles in an effort to contribute to the successful expansion of e-mobility. Conditions and prices at publicly accessible charging facilities are a key factor for consumers when deciding whether to switch to electric cars. The market is still emerging. However, the competition authority has already received complaints about prices and conditions at the charging stations. The study aims to ensure effective competition, non-discriminatory access to potential locations for charging stations as well as the specific terms and conditions applying at the charging stations.

A second example is the Private Health Care Inquiry by the South Africa Competition Authority (CCSA, 2019<sup>[23]</sup>). The authority found the market was characterised by high and rising costs of healthcare and medical scheme cover, and a significant overutilization without stakeholders being able to demonstrate associated improvements in health outcomes. The final findings and recommendations have been published at a time when South Africa is embarking on a journey to establish a national Health Insurance Fund (NHI) to achieve universal health coverage by 2026. The competition authority considered this changing public policy environment in the implementation of their recommendations, which should help to provide a better environment in which a fully implemented NHI can function more effectively.

Over the longer-term, potential competition issues related to public policy could also arise post-Covid-19. For example, there is a risk that government financial aid to re-start weakened economies maybe combined with protection measures for domestic production. This could take the form, for example, of increased trade barriers weakening import competition.

More broadly, industrial policy in the last few years has emphasised the use of selective policy tools focused on policies such as clustering, place-based and mission-oriented innovation. A move away from these type of policies towards more traditional ones may shield companies from competition and reduce their efficiency and contribution to economic recovery (OECD, 2020<sup>[24]</sup>). Competition authorities' advocacy work, including market studies, can contribute to the design of industrial policies developed with competition principles in mind.



# 3 Market studies as an ex-ante tool for emerging issues

Market studies are one of several tools at the disposal of competition authorities to address competition problems, alongside its enforcement and other advocacy tools. This section discusses when market studies might be a more effective tool to tackle emerging competition issues. It then considers their strengths and limitations.

## When might market studies be a more effective tool to tackle emerging competition issues?

Whether market studies are better suited to achieve the objective of making markets work well in general is, perhaps, not an issue that can be determined in the abstract. Competition authorities generally use both enforcement and advocacy tools. These are often complementary and mutually reinforcing. However, in the case of emerging competition issues, the competition authority is unlikely to have had enforcement cases yet or to have a detailed knowledge of the market or sector in question. Hence in this case, the use of market studies may typically precede other enforcement actions and so act as a beneficial ex-ante tool.

Enforcement tools are mainly ex-post. They may not be the most effective tool to tackle emerging competition issues particularly when an authority aims to be proactive at addressing issues before they become widespread, or when there are difficulties on making a case which may lengthen the time the authority may need to adopt an anti-trust solution. A frequently cited example is the Google shopping case<sup>3</sup> decision imposing a 2.4 billion euro fine on the online search company. This was adopted eight years after the announcement of the investigation, in spite of the European Commission's efforts put into reaching a commitment decision, in order to arrive at an effective solution much earlier. Another well-known example is the European Court of Justice judgement in the Intel case<sup>4</sup> appeal in 2015 relating to abuse of dominance activity that took place between 2002 and 2007. This was despite the fact that the adoption of the Intel decision by the European Commission, which fined Intel 1.06bn euros, was reached in 2009.

More recently, the Facebook case<sup>5</sup> by the German Competition Authority used a novel antitrust theory of harm to demonstrate that the company had exploited its dominant position by coercing people into giving up their personal data. This ruling came at a time where Facebook is under intense scrutiny by officials in the European Union and the US Federal Trade Commission in relation to how it collects and handles personal data.

This raises the question of how best to help the consumer in such cases. Time spent on conducting an enforcement investigation and to respect due process is necessary to avoid under or over-enforcement. Market studies, however, can provide a timelier response to help with emerging competition issues. Authorities could consider market studies as an easier way to provide market certainty and clarity on anticompetitive practices versus undertaking a lengthy enforcement case with theories of harm that are

highly case-specific and maybe difficult to prove. Moreover, a market study can provide the opportunity for an authority to clarify that certain behaviour may be found to infringe competition law, even if no specific instances of this behaviour have been identified during the study (OECD, 2017<sup>[25]</sup>). They also provide in depth knowledge of how a market works allowing the authority to intervene more effectively in the future when an enforcement case does arise.

In addition, market studies recommendations can potentially extend beyond a specific example of an enforcement issue that has been analysed, where the analysis indicates that the same or similar issues apply to other firms or markets. Going back to the Google shopping case, for example, the European Commission was only able to impose remedies relating to Google shopping. It could not extrapolate from its findings and impose remedies relating to similar behaviour in other search markets.

In a similar vein, in the Facebook case, the German Competition Authority was only able to stop Facebook from automatically collecting and combining personal data. However, such business practice is allegedly common more widely in the industry. Although follow-on cases are easier to bring once an initial decision has been reached, market studies might potentially be a more effective tool to identify solutions preventing firms from engaging with these sort of behaviours more generally.

Given the mentioned challenges with enforcement cases, the European Commission is considering the introduction of a new legal power - the New Competition Tool (NCT). The NCT aims to enable the authority to intervene earlier. The Commission groups its structural concerns into two categories depending on whether harm is about to affect the market (structural risks for competition) or has already affected the market (structural lack of competition).

The Commission's Inception Impact Assessment<sup>6</sup> for its proposed new tool highlights the potential to use the tool in relation to markets displaying systemic failures going beyond the conduct of a particular company with market power; or oligopolistic market structure with an increased risk for tacit collusion.

The Commission's proposal presents four options (see Box 4). These vary according to threshold and scope. The threshold for using the NCT might be based on: dominance or structural features of markets; whereas the scope might be "limited" (focused on digital markets) or "broad" (across the economy as a whole). While the most pressing competition problems are widely perceived to occur in digital markets, other sectors, such as pharma, energy, media and manufacturing could also be considered under the broad scope option.

The NCT would allow the Commission to intervene before a dominant company successfully forecloses competitors or raises costs, or to intervene when a structural risk of competition prevents the internal market from working well. In this case, the tool would enable the Commission to impose behavioural and where appropriate, structural remedies. The Commission could also recommend legislative action to improve the functioning of the market concerned. The exact form of the NCT is yet to be set. The public consultation of this new tool had just closed at the time of writing.

#### Box 4. The EU Commission “New Competition Tool”

Option	Companies	Sector	Issues	Remedies
1	Dominant companies only	All sectors	Unilateral conduct that may lead to foreclosure of competitors; or increased costs for competitors.	Behavioural and/or structural remedies
2	Dominant companies only	Limited to certain sectors, notably; digital or digitally-enabled markets	Unilateral conduct that may lead to foreclosure of competitors; or increased costs for competitors	Behavioural and/or structural remedies
3	All companies	All sectors	A structural risk for competition or a structural lack of competition that prevents the internal market from functioning properly	Behavioural and/or structural remedies Legislative Action
4	All companies	Limited to certain sectors, notably; digital or digitally-enabled markets	A structural risk for competition or a structural lack of competition that prevents the internal market from functioning properly	Behavioural and/or structural remedies Legislative Action

Source: EU Commission consultation on the “New Competition Tool” available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12416-New-competition-tool>.

## Market studies: strengths and limitations

The legal framework for market studies in a jurisdiction, including the powers and flexibility of the competition authority, has implications for the types of competition issues that can be explored, the depth in which they can be explored, and the possible outcomes of market studies (OECD, 2017<sup>[25]</sup>). Despite these differences across jurisdictions, market studies present common strengths as well as limitations. This section discusses the strengths and limitations of the market study tool when used to address emerging competition issues.

### Strengths

#### *Forward looking*

Competition enforcement tends to focus, for sound legal and economic reasons, on the actual or potential harm caused by historical or on-going anticompetitive practices. Market studies contribute by providing the flexibility to be forward looking. This tool serves to identify and diagnose emerging competition issues by exploring the different drivers and identifying possible solutions.

In Section 2, we discussed some examples where competition authorities have taken a forward-looking approach by considering potential scenarios where risks could arise in the future. These can enable an authority to put in place frameworks that not only address the adverse consequences found but that can also reduce the likelihood of new issues arising.

### *Cover a broader set of competition issues*

Market studies analyse whether there are competition problems in a sector instead of analysing the conduct of individual firms in that market. Therefore, these studies are holistic in nature and can cover a broader set of issues than can be done in competition enforcement. In particular, they are well suited to carry out holistic analysis of markets where problems might be market wide and there are interlinked factors creating competition concerns (e.g. supply side issues, consumer protection issues, data and privacy issues, etc.).

In a number of jurisdictions, market studies are used both for competition and for consumer policy, as these two areas often fall within the remit of the same agency. Market studies enable to consider the synergies between these two policy areas. For jurisdictions with separate consumer protection and competition authorities, integrating the two closely related areas can be a challenge. However, even in those cases, market studies can be a good tool to enable such integration as they can accommodate a wider perspective than a competition authority would be allowed to take in a competition enforcement investigation. From this broader perspective, recommendations for activities in the consumer protection area could also be made.

Moreover, as the focus of market studies is on the analysis of competitive constraints, they are better able than competition law to consider the wider context. This includes the interplay between competition and other policy areas beyond consumer policy, such as privacy, environmental and wider sustainability policies. As such, market studies can clarify what options there are to address issues found from a competition policy, competition enforcement, regulatory, or other policy perspective.

### *Focus on the dynamic process of rivalry*

Market studies offer the opportunity to focus the analysis on the process of competition and not just on outcomes. This can be particularly important when understanding whether outcomes are competitive becomes more difficult, such as when markets are constantly changing as a result of the forces of innovation, globalisation, or other drivers. A focus on the dynamic process of rivalry in a market enables competition authorities to better articulate and evidence the drivers of rival entry, innovation, product development, etc. and becomes important to understanding if the competitive process is working well.

### *Play a proactive role in promoting competition*

Most competition enforcement mainly focus on preventing competition from worsening, for example through mergers, collusion or abuse of dominance. Market studies play a more pro-active role in promoting increased competition. For example, both Canada's Competition Bureau and Japan's Fair Trade Commission advocated for a series of remedies to enable greater mobile phone switching in their telecommunications markets.

Both authorities advocated limiting the length of service contracts to ensure consumers could move from one service provider to another. In addition, both authorities advocated minimising fees to cancel a contract with Canada's Competition Bureau suggesting fees should be limited to any outstanding balance owed by the customer in relation to the device only. In Japan, where contracts automatically were renewed if not cancelled after two years, the JFTC also proposed simpler procedures for cancelling contracts. Both authorities have also advocated for prohibiting handset locking<sup>7</sup> as it acted as a powerful block to consumers to switching service provider.

### *Provide flexibility on the design of effective recommendations and outcomes*

Much of the work of competition authorities focuses on supply-side interventions. For example, merger control seeks to ensure that business combinations do not give rise to increases in the concentration of suppliers in ways that would result in worsened competitive outcomes, while anti-cartel enforcement seeks to ensure that suppliers do not weaken competition between them by agreement.

Market studies represent a flexible tool for competition authorities to seek to improve market outcomes by addressing issues on both the supply and the demand-side of markets. As a result, it can offer targeted, pro-business, pro-consumer solutions to foster competition. Moreover, as already discussed, market studies recommendations can be forward looking and market wide, with solutions frequently applying across the market, irrespective of individual firms. A package of recommendations that complement each other are often used to address different drivers of the competition issues identified.

The most common market study outcomes across jurisdictions are recommendations for regulatory changes, calls for firms to change their behaviour, and in some situations law enforcement interventions. In particular, market studies in relation to emerging competition issues allow competition authorities to:

- Build technical expertise about new or fast-moving markets, or to take account of recent development in markets in general to identify risks to competition that could arise in the future.
- Reduce uncertainties about how the authority will apply competition principles for new or fast changing business models and markets, or where there have been recent changes.
- Develop thinking about solutions and proposals for future regulation or legislation in order to facilitate advocacy that minimises adverse effects on competition.

In the majority of jurisdictions, competition authorities' recommendations are not legally binding. In a small number of jurisdictions (UK, Mexico, and Iceland), competition authorities have the legal power to impose certain remedies, such as issuing orders to market participants with regards to their conduct, orders to regulators, or requiring divestitures, as long as these remedies are shown to be effective and proportionate. This power allows competition authorities to deal with a broader range of competition problems in a market. It also permits the design of more comprehensive and effective remedy packages (OECD, 2018<sup>[11]</sup>). These remedies can be similar to those more typically imposed in other jurisdictions through legislation. As a result, such power typically comes with very tight governance and procedural checks and balances to ensure the competition authority remains within its remit and is accountable for its interventions.

### *Enable a more co-operative engagement with market participants*

Involving market participants in market studies is a key source of evidence. Views from firms, consumers, regulators, and other market participants enable the authority to form a broader and sounder view of the sector. Participant's involvement in market studies tends to be less legalistic and adversarial, and more open relative to market participant's engagement in enforcement cases. Greater transparency during the market study thus stimulates co-operative engagement. It can be done, for example, by publishing the process and timeline for the market study, communicating the launch of a market study, objectives and scope; and publishing the analysis and evidence upon which the authority's findings and recommendations are based.

Moreover, effective involvement of market participants throughout the market study process (from informal preliminary interviews to in-depth consultation) helps input into the authorities' scope, analysis and recommendations. For example, market participants may sometime show that a potential recommendation would not be workable in practice, or that an important dynamic is missing, or that some elements have not been taken fully into account in the authority's analysis. There is also greater opportunity for market participants to "buy-in" to the recommendations where it is clear that their views have been fully considered.

In the case of emerging competition issues, the co-operative strength of the market study tool may play a more crucial role for the study to achieve its objectives because knowledge and information about the market is more limited. This is particularly relevant in newer and more complex markets.

## **Limitations**

### *Risk of static remedies and outcomes*

Recommended changes to legislation/regulation tend to be static in nature and can take time to change. In a time of rapid technological change, the way that legislation can be changed is particularly important.

An OECD roundtable on competition and regulation (OECD, 2019<sup>[26]</sup>) discussed the risk of regulations becoming out of date and slowing down market changes. It discussed that regulations may be easier to change when they are under the control of independent regulators. Independent regulators can be given a general set of responsibilities under primary legislation, which they can implement through a principle-based approach that may involve easily changes to secondary legislation or guidance. This can ensure that regulation can adapt to market developments. At a time of increasing uncertainty about future market structure and technology, it is worth re-considering the case for encouraging principle-based primary legislation. This can give broad discretion to independent regulators to adapt their ex ante regulations to new sector conditions and so reduce the risk of existing regulations holding back innovation and help to identify more efficient new options that may or may not require regulations.

For rapidly changing markets such as digital platforms, the UK, following its market study on digital online advertisement and digital platforms (CMA, 2020<sup>[27]</sup>) has recommended that the government establishes a pro-competition regulatory regime for online platforms. A Digital Markets Unit (DMU) would be empowered to enforce a code of conduct to govern the behaviour of platforms with market power; ensuring concerns can be dealt swiftly, before irrevocable harm to competition can occur. The DMU should also have powers to tackle sources of market power and increase competition, including powers to increase interoperability and provide access to data, to increase consumer choice and to order the break-up of platforms where necessary.

This is intended to make it easier for new business to enter digital markets, give more predictability to all companies about the rules and standards that apply, spur innovation and provide companies with higher quality and choice. The EU Commission is also consulting on ex-ante platforms regulation.<sup>8</sup>

### *Risk of recommendations not being implemented*

As previously mentioned, recommendations issued by the majority of competition authorities are not legally binding. Only a few jurisdiction can issue legally binding recommendations such as the UK, Mexico, Iceland, and potentially the EU Commission in the future depending on the outcome of the consultation on the EU “New Competition Tool”.

Evidently, recommendations which are legally binding would reduce the risk of these not being considered or implemented. This would be similar to imposing them through legislation. As a result, such power comes with very tight governance and procedural checks and balances on the competition authority given that the authority does not possess a democratic mandate as Government or Parliament.

The risk of recommendations not being considered or implemented can be reduced when rule-makers are obliged to give reasons as to why they would not adopt the recommendations of the competition authority. Where specific rules on consultation procedures are absent, some procedural safeguards or formalisation of the consultation process would be beneficial. In particular for less mature competition authorities where consultation does not seem to be working well.



### *Study costs and time*

Market studies can be costly and time consuming, depending on their scope and depth of analysis, for competition authorities as well as for market participants subject to the study. Generally, to avoid undue burden, the best practice is for the competition authority to obtain first relevant information from existing information sources, including information publicly available, such as published reports by other agencies and regulators, as well as government statistics or research in the public domain. Then external participants are involved in discussions to obtain a sound understanding of the dynamics of the market, to find out how best to obtain the missing information, and to verify the collective information (OECD, 2017<sup>[25]</sup>).

However, in the case of emerging issues, by their very own nature, publicly available information might be limited. Thus, obtaining the necessary information to conduct the study is likely to rely more on external participants. On the one hand, this will unavoidably increase the burden on them. On the other hand, however, by recommending effective solutions and reducing uncertainties about how the authority will apply competition principles for new or fast changing business models and markets, or where there have been recent changes, can reduce the likelihood of future breaches of competition rules thereby reducing the future burden on both competition authorities and private parties.

### *Risk of information from stakeholders not being forthcoming*

Not all authorities benefit from the power to require private parties to provide information for market studies. In 2015, the OECD Secretariat conducted a survey in which five of the sixty competition authorities participating in the survey responded that they lacked these powers and with another ten reporting that they needed to resort to courts to compel compliance with information requests (OECD, 2016<sup>[2]</sup>). In these situations, authorities need to rely more on the willingness of stakeholders to provide information on a voluntary basis.

That said, authorities with information gathering powers for market studies will generally not resort to use them as a first step. For example Japan, the US, the UK will initially seek to obtain information from stakeholders on a voluntary basis, resorting to using their powers only in situations where the information is not forthcoming and is required for the market study to accomplish its objective (OECD, 2016<sup>[2]</sup>). However, the fact that they can resort to their powers to demand this, if necessary, makes the market study a stronger tool to provide the necessary empirical analysis to diagnose a problem, to evidence the impacts of a problem, and to build a consensus about how to solve it.

Given that verifiable empirical data and evidence may be scarcer when analysing emerging issues in new or changing markets, where there is reluctance by private parties to provide such information, particularly in the absence of formal powers, authorities may need to make greater use of qualitative information. This may not be sufficient to draw robust conclusions and therefore limit the effectiveness of the market study tool to a certain extent. An effective strategy for stakeholder outreach becomes essential.



# 4 Strategic considerations when selecting the market study tool

A number of strategic factors were identified as part of the OECD work on how to select market studies as a tool for competition analysis (OECD, 2017<sup>[28]</sup>). This section reviews how such considerations would apply in relation to emerging competition issues. It also discusses the strategic benefit of international co-operation.

Emerging competition issues arise in sectors undergoing significant change. For example, markets that are subject to disruptive innovation can be a strategic target for market studies given that these innovations occur in markets that are usually protected by incumbents' vested interests that stand to lose out from the disruption. Therefore, the outcome of the market study can advocate the right framework to ensure the incentives to innovate and compete in these markets will produce positive changes in the competitive dynamics in the sector.

Government priority sectors with forthcoming regulatory or policy initiatives can also present strategic opportunities for market studies. As government regulation and policy are not typically susceptible to competition enforcement, market studies can be a tool to inform the design of the policy or regulation so that it avoids public restrictions distorting a market or hindering competition up front.

An important pre-requisite is that authorities are informed about forthcoming regulatory/policy initiatives in good time and be in a relatively close association with the reform process throughout. There are several co-operation instruments which can facilitate this:

- Memorandum of Understanding (MoUs) and laws – many competition authorities have MoUs with regulators, which establish modes of co-operation and, how and when information will be shared. In South Africa, for example, the Competition Commission has MoUs with regulators and other government agencies including the National Consumer Commission, the Port Regulator, the Department of Agriculture amongst others<sup>9</sup>. Many competition laws provide authorities to enter into such an agreement. In Korea, Article 63 of the Monopoly Regulation Act requires other regulators and government bodies to consult with the KFTC prior to establishing laws or regulations that would restrict competition. In Mexico, regulatory and government bodies are required to consult COFECE concerning new laws or regulations that may restrict competition. In these cases, the extent to which regulators need to respond to, address or accept competition authority recommendations is specified in the law.
- Regular contact between regulators, government bodies, and competition authorities can also help ensure that opportunities for communication arise. Such regular contacts are sometimes formalised with designated individuals responsible for meeting and updating each other regularly so as to make the other institution aware when matters of potential interest arise. Staff exchanges can also contribute to create informal channels of communication, enabling the authorities to benefit from each other's technical experience.

- Joint reports – for example, the Big Data Sector Inquiry conducted jointly by the Italian Competition Authority, The Communication Regulators, and the data Protection Authority (2020<sup>[13]</sup>). The three Authorities, with their different goals, strived to analyse big data issues in a comprehensive and effective way that combined privacy, consumer protection, and competition. The results of the inquiry highlighted how it would be difficult to identify the most appropriate course of action without an interdisciplinary approach, and how synergies between the three authorities can be effectively achieved whilst respecting each other's objectives.

Sectors where the regulator or government agencies do not have competition goals may increase the value of a market study because the authority can provide a unique and value-added perspective in carrying it out. Such cases may present substantial opportunities for the competition authority to influence the design of regulated frameworks that otherwise may not have been designed with competition in mind.

Sectors in which enforcement cases have been brought by other authorities in a jurisdiction and have identified potential wider competition issues can also be good candidates for market studies. For example, in the joint study on Competition Law and Data (2016<sup>[29]</sup>) the French Competition Authority and the German Competition Authority cited the European Commission's findings in several merges, as well as analysis of data issues from the UK Competition Authority and the US Government. This contributed to the identification and analysis of emerging competition concerns and the identification of possible competition authorities' responses with respect to the collection and use of data.

The degree or potential degree of public concern if the emerging issues fully materialised is also a strategic factor that competition authorities may consider when deciding whether or not to use the market study tool. At a more detailed level, the likely direct or indirect impact on consumers and the potential wider economic benefits of addressing the emerging competition issues of concern, is relevant when considering market studies as a tool.

An overarching strategic consideration is the need for an international agenda to harness the benefits of expanded competition when emerging competition issues arise in markets that are transnational. This requires a closer cross-border co-operation between competition authorities and governments in sharing best practice and developing a common approach to common issues. For example, the cross-border nature of many digital platforms and more widely the global scope of modern technology means that the competition challenges faced by one competition authority are not unique. Although the correct approach to preserving competition in individual markets will be for national authorities to decide, there is a clear benefit in working together to develop a shared international approach. This provides an opportunity to align different regulatory environment to promote a global approach in which business have clarity and certainty on the rules within which they are expected to operate.

There is a range of institutions through which a common approach could be reached, ranging from the International Competition Network (ICN) and the OECD, through multilateral forums such as the G7 and the G20. Although each has a different role in advancing international co-operation, the overarching aim of addressing shared challenges to emerging competition issues through co-operation remains.

# 5 Conclusion

This paper examines the use of market studies with the specific objective of tackling emerging competition issues. Emerging competition issues are described as scenarios where certain new or changing market features create a threat to competition which present new and evolving challenges. As a result, competition authorities are unlikely to have sufficient enforcement experience or detailed knowledge of the market or sector in question yet to understand the competition problems that could arise, and to determine the appropriate course of action. Hence in the case of emerging competition issues, the use of market studies may precede other enforcement actions and thus act as a beneficial ex-ante tool.

Enforcement tools are mainly ex-post. They may not be the most effective tool when an authority aims to be proactive at preventing emerging competition issues from becoming wide spread at irreversible harm to consumers. Despite the different market studies regimes across jurisdictions, market studies present the following common strengths as well as limitation to tackle emerging competition issues:

- Market studies can be forward looking, cover a broader set of issues, focus on the dynamic process of rivalry and promote increase competition than can be done in enforcement. This enables the authority to consider market wide problems and the interlinkages between the different factors (supply side and demand side issues) creating emerging competition concerns.
- Market studies recommendations can potentially extend beyond a specific example of an enforcement issue that has been analysed, where the analysis indicates that the same or similar issues apply to other firms or markets. In particular, authorities could consider whether market studies are an easier way to provide market certainty and clarity on anticompetitive practices versus undertaking a lengthy enforcement case with case-specific arguments that maybe difficult to prove or extrapolate from to other cases.
- Moreover, a market study provides an opportunity for an authority to clarify that certain behaviour may be found to infringe competition law, even if no specific instances have been identified during the study. This enables the authority to shape early on the development of business practices in new or changing markets in a way that is compatible with competition principles.

Market studies are not without limitations.

- Recommended changes to legislation or regulation tend to be static in nature, and can take time to implement. At a time of rapid technological change, the way that legislation or regulation can be changed is particularly important.
- Recommendations issued by the majority of jurisdictions are not legally binding so there is a risk that some (or all) recommendations might not be implemented. For the few jurisdictions that can issue legally binding recommendations, such power rightly comes with very tight governance and procedural checks and balances on the competition authority. This is to ensure the competition authority remains within its remit and it is accountable for its interventions.
- Market studies can also be costly and time consuming. However, if the market study outcome is expected to be effective at initiating solutions and reducing uncertainties about how the authority would apply competition principles in new or changing markets, this can reduce the likelihood of

breaches of competition rules thereby reducing the future burden on both competition authorities and private parties.

Overall, market studies can play a key preventive role in identifying and diagnosing emerging competition issues by exploring the different drivers and clarifying the options available to tackle them from a competition policy, competition enforcement, regulatory, or other policy perspective. As a result, market studies can initiate solutions to mitigate consumer harm before it becomes significant, promote further competition, and reduce the likelihood of (or opportunities) for violations of competition rules.

There is also a need for an international agenda to harness the benefits of expanded competition when emerging competition issues arise in markets that are global. This requires a closer cross-border co-operation between competition authorities and governments in sharing best practice and developing a common approach to common issues.

The analysis and conclusions presented in this paper aim to contribute to the debate on how best to use and adjust the existing competition policy frameworks and tools to better deliver benefits to society in a changing world.

# Endnotes

<sup>1</sup> The term “market study” is interpreted in this note to comprise a variety of instruments used in various jurisdictions featuring similar characteristics, such as sector enquiries (EU and a number of its member states), market enquiries (South Africa), fact-finding enquiries (Italy), fact-finding surveys (Japan) and general studies (U.S. DOJ) amongst others. For a further description of the different definitions of market studies across jurisdictions, see (OECD, 2016<sup>[2]</sup>)

<sup>2</sup> For example, in pharmaceutical markets firms often have pipelines of new treatments that each give rise to their own period of temporary market power. This may result in an increase in concentration that does not appear to deteriorate over time, and would be consistent with ongoing and intense competition to obtain the next extension of market power.

<sup>3</sup> See [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39740](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39740)

<sup>4</sup> See [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_37990](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_37990)

<sup>5</sup> See [https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2019/B6-22-16.pdf?\\_\\_blob=publicationFile&v=3](https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2019/B6-22-16.pdf?__blob=publicationFile&v=3)

<sup>6</sup> See <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12416-New-competition-tool>

<sup>7</sup> “Handset locking” refers to the situation when the mobile handset is locked to the network from which the handset is purchased. This means the handset will only work when used with that particular network provider.

<sup>8</sup> See <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers>

<sup>9</sup> For all the MoUs the Competition Commission South Africa has signed with the country’s sector regulators see [https://one.oecd.org/document/DAF/COMP/WD\(2017\)49/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2017)49/en/pdf).





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